Copy

APR 13 192
WM. R. STANSB
CL

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No. ~~984~~ 283

Railroad Commission of the State of California,
Petitioner,
vs.
Southern Pacific Company (a Corporation), and Southern Pacific Railroad Company (a Corporation),
Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

C. W. DURBROW,
E. W. CAMP,
A. S. HALSTED,
CHAS. H. BATES,
Attorneys for Respondent.

W. F. HERRIN,
Of Counsel.

Parker, Stone & Baird Co., Law Printers, 233 New High St., Los Angeles.

SUBJECT INDEX.

PAGE

Abandonment of Existing Facilities 4

Extensions and Joint Trackage Arrangements Necessary Under the Railroad Commission's Order 5

Corrections in Petitioner's Statement of Facts 8

The Transportation Act of 1920 Vests in the Interstate Commerce Commission Sole Power and Authority to Order or Permit Joint Use of Railroad Facilities. That Field Is Thereby Completely Occupied, to the Exclusion of Any Right of State Commissions to Act in the Premises 9

The Language Used in the Transportation Act of 1920 Is Clear. No Reference May Be Had to Views of Individual Members of Congress Nor to Committee Reports Where the Effect Would Be Only to Create Doubts, Which Do Not Now Exist 15

Conclusion 16

TABLE OF CASES.

Aldridge v. Williams, 3 How. 9 15

Akron, Canton & Youngstown Railway Company *et al.*, v. The United States *et al* 9

District v. Washington, 108 U. S. 243 15

Dunlap v. U. S., 173 U. S. 65 15

Louisville and Nashville v. The State, 16 Ala. App. 199, 76 So. Rep. 505 12

Maxwell v. Dow, 176 U. S. 581 15

Missouri etc. v. Larrabee etc., 211 U. S. 612, 53 L. Ed. 352 10

PAGES

New York Central Railroad Company v. Public Service Commission of the State of New York, 198 Appellate Division 436, 191 New York Supplement 636 12

People v. Public Service Com. (Court of Appeal, New York), 233 N. Y. 113, 135 N. E. 195..... 11

Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Company, 257 U. S. 563.... 9

Railroad Commission v. C. B. & Q. Railroad Company, 257 U. S. 563..... 16

State v. Atlantic C. L. R. R. Co., ... Fla. ....., 87 So. Rep. 773 13

U. S. v. U. P. R. Co., 91 U. S. 72..... 15

NOTE.

The petitioner, Railroad Commission of the state of California, has filed three petitions for writs of certiorari to the Supreme Court of the state of California, entitled as follows:

(1) Railroad Commission of the state of California, petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), respondent.

(2) Railroad Commission of the state of California, petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), respondent.

(3) Railroad Commission of the state of California, petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), respondent.

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. An original of this brief is therefore filed in each of the three cases, together with the usual number of copies. These bear the titles, however, of the proceedings in which filed.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No.....

Railroad Commission of the State of California,
Petitioner,

vs.

Southern Pacific Company (a Corporation), and Southern Pacific Railroad Company (a Corporation),
Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

While a respondent is not required by the statutes or rules of court to file a brief in answer to a petition for a writ of certiorari, the

instructions relative to applications for writs of certiorari, under the Acts of March 3rd, 1891, and September 6th, 1916, contemplate his doing if he so desires. In this case the respondent deems it desirable to do so, primarily for the purpose of pointing out just what facilities of the railroads will have to be abandoned if the order of the Railroad Commission of the state of California is carried out, and secondly, what extensions and joint trackage arrangements will have to be provided in order to comply with the terms of that order. Jurisdiction over these matters is expressly vested in the Interstate Commerce Commission under the Transportation Act, 1920, and for that reason alone the decision of the Supreme Court of the state of California is clearly right. These facts and conclusions may be amplified.

Abandonment of Existing Facilities.

Let us refer to the map attached to the petitoin. All trains of the Southern Pacific, upon its line to San Pedro and the Harbor District, and all of its trains to and from Santa Ana and its several branches in Orange county, now move along Alameda street. All passenger trains to and from San Francisco and other points to the north, and all passenger trains upon its main line to El Paso, move along Alameda street northerly of Fourth street. These "operations"

along Alameda street, a distance of approximately three miles, according to the terms of the order must be discontinued and abandoned, only local switching being permitted.

The passenger station of the Southern Pacific is located at the intersection of Fifth street and Central avenue. This is a modern structure, completed in 1915. While the order does not expressly provide for its abandonment its effect is precisely that, for if passenger trains cannot be run into and out of such a station it thereupon ceases to be a passenger station.

The Santa Fe and Salt Lake passenger stations are located respectively westerly and easterly of the Los Angeles River, near its intersection with First street. While it is conceivably possible that these two stations might still be used as such after completion of a union depot in the Plaza district, as contemplated by the Railroad Commission, the fact nevertheless remains that in practical effect the enforcement of the order will render these properties useless and will result in their abandonment.

Extensions and Joint Trackage Arrangements Necessary Under the Railroad Commission's Order.

Since all train movements except local switching are ordered discontinued along Alameda street, the Southern Pacific would have to seek a new route through the city, north to south.

What routes are open to it?

It might make use of the tracks of the Santa Fe along the westerly bank of the river—the Santa Fe's principal terminal facilities in the city—by the construction of connecting tracks between the two lines in the southerly portion of the city, and the construction of other connecting tracks in the north central portion of the city.

Or it might make use of the tracks of the Salt Lake along the easterly bank of the river —the latter's principal terminal facilities in the city—by the construction of similar connecting tracks. This would, however, occasion crossing and again recrossing the river.

Or it might build a new line of its own through the city, but this is entirely impracticable due to the enormous expense of constructing a line of such length through the heart of the industrial section of a large city.

The Salt Lake would have to build an extension or new line across the river to reach the area defined by the commission as the site for a union station.

The Southern Pacific main line to and from the east borders this site on the north as does the Santa Fe on the east, and it is conceivably possible to bring trains upon those lines into a depot located within the area mentioned, without serious operating difficulties. However, it

would be extremely difficult to handle Southern Pacific trains from and to the north, into and out of such a station without some switching back and forth, which is of course contrary to good operating methods. This objection might be obviated by the construction of other extensions of line, but this only emphasizes the fact that the order of the Railroad Commission does contemplate, actually and in practical effect, extensions of very considerable magnitude, together with joint use of certain main line tracks and terminal facilities now separately owned and operated.

The petitioner seeks to avoid the issue raised by this situation, by saying that the abandonment of facilities and the construction of extensions and the joint use of facilities are not contemplated by the express terms of the order as made, but the fact remains that such is the necessary effect of the order. The Railroad Commission has no power to do indirectly what it cannot do directly.

We shall not discuss in this brief constitutional questions respecting an order of any commission directing a public utility to expend large sums in acquiring new property and devoting it to a public use.

Corrections in Petitioner's Statement of Facts.

On pages 15 and 16 of petitioner's brief it is stated:

"The three railroads involved approach the city from the north and come together at a point marked 'North Broadway Viaduct' near the top of the map. All three roads pass under this viaduct."

While literally true, the statement gives a somewhat false conception of the true situation. The Southern Pacific trains to the north pass this point, as do those of the Santa Fe via Pasadena. The Salt Lake has but a branch to Pasadena and that is the line referred to. All of the Santa Fe trains on its main line to the east through Fullerton, and to San Diego, move through the southerly portion of the city, as do those of the Southern Pacific on its Santa Ana and San Pedro branches. All of the main line trains of the Salt Lake and its San Pedro branch line trains enter and leave through the southerly portion of the city. The main line of the Southern Pacific to the east does not pass near the North Broadway viaduct.

On page 17 of petitioner's brief it is stated that the Salt Lake line borders the area prescribed by the Railroad Commission. This is not the fact, for it will require the construction of an extension of the Salt Lake line crossing the river, to reach the area mentioned.

The Transportation Act of 1920 Vests in the Interstate Commerce Commission Sole Power and Authority to Order or Permit Joint Use of Railroad Facilities. That Field Is Thereby Completely Occupied, to the Exclusion of any Right of State Commissions to Act in the Premises.

In the decision of the Supreme Court of California, of which petitioner seeks a review, is a clear exposition of the new policy of the federal law with reference to the railroads. And in the recent cases of Akron, Canton & Youngstown Railway Company *et al.*, v. The United States *et al.*, (The New England Divisions' case), decided by this court on February 19th, last, and in Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Company, 257 U. S. 563, this court has in no uncertain language recognized and given effect to the greatly broadened powers of the Interstate Commerce Commission, under the Transportation Act, 1920.

The Supreme Court of the state of California has recognized in the instant case that the order of the Railroad Commission, requiring as it did the construction and extension of lines of railroad, the abandonment of operations upon a very important section of main line of one of the railroads, and the joint use of terminal fa-

cilities and the construction of certain extensions, infringed upon these newly granted powers of the Interstate Commerce Commission.

As to joint use of terminal facilities: Petitioner's brief says, page 26, that the order does not require any joint use of facilities; but this seems to be intended to apply to present or existing facilities and to admit that there is to be and must be a joint use of the new station and the facilities appurtenant thereto.

It is clear that under the provisions of paragraphs 3 and 4 of section 3 of the Interstate Commerce Act the power to order such joint use of a terminal is now vested in the Interstate Commerce Commission. In answer to this, the petitioner cites the case of Missouri etc. v. Larrabee etc., 211 U. S. 612, 53 L. Ed. 352, in support of the proposition that although the act may have vested such power in the Interstate Commerce Commission, yet until that commission asserts and exercises the power the state's authority abides the same as if Congress had not acted at all. In other words, petitioner contends that Congress having been delegated the power to regulate interstate commerce, may itself delegate to the commission the right to say whether or not that power shall be exercised, and this is plainly contrary to the common maxim *delegatus non potest delegare.*

But we shall certainly not attempt here to question any ruling made by this court. Our view of the Larrabee case and of its inapplicability here is best illustrated by four cases recently decided in the state courts.

The first of these, to which we invite the court's most careful attention, is the very recent decision of People v. Public Service Com. (Court of Appeal, New York), 233 N. Y. 113, 135 N. E. 195. It is stated in that opinion that in September, 1920, the Public Service Commission made an order requiring the N. Y. Central and the Lehigh to make such track connections between their lines in and near Batavia, N. Y., and lay such other tracks and facilities as "may be necessary to establish and furnish adequate and convenient interchange of freight; that the connection be made by repairing and completing the track now connected with the tracks of the Lehigh and extending to a point near the track of the N. Y. C., which track was formerly connected with the tracks of the N. Y. C."

In the second division of the opinion the court quotes the second paragraph of section 3 of the Interstate Commerce Act as amended by the Transportation Act of 1920, section 405, and says:

> "To sustain the order of the Public Service Commission in the instant case would necessarily establish that the two several

> commissions mentioned were clothed with jurisdiction to grant the relief sought and require us to ignore the well-established principle of law that the Congress, having delegated to the Interstate Commerce Commission power to deal with the subject matter of this proceeding, an exercise of like power by the state is thereby superseded." (Citing cases.)

Another case to which we may refer is, The People of the State of New York, *ex rel.*, the New York Central Railroad Company, v. Public Service Commission of the State of New York, 198 Appellate Division 436, 191 New York Supplement 636, which was affirmed in a memorandum opinion of the New York Court of Appeals, reported in 134 Northeastern 590, that court simply saying that the subject matter of the controversy had, by the Transportation Act of 1920, been relegated to the Interstate Commerce Commission. Thereafter, application was made to this court for a writ of certiorari, and that was denied without an opinion (257 U. S.——, 42 Sup. Ct. 314, 66 Law Edition——).

In Louisville and Nashville v. The State, 16 Ala. App. 199, 76 So. Rep. 505, the Supreme Court of that state reviewed the opinion by the Court of Appeals. That case involved what is known as the Railroad Headlight Law of Ala-

bama, which required a headlight of a certain candlepower to be used on every locomotive.

The Supreme Court of Alabama, page 514 of the Reporter, said:

> "When the mandatory act of Congress approved March 4, 1915, is read in connection with the Safe Locomotive Boilers Act of February 17, 1911, we cannot escape the conclusion that the intention of Congress is plain that the states must be excluded from the right to legislate within the field to which the several original acts and the mandatory act extended the federal authority. It is immaterial that the final rules on the subject of headlights to be used on locomotives were not promulgated by Interstate Commerce Commission until, respectively, June 6 and December 26, 1916, after the commission of the alleged offense for which the prosecution was had.
>
> "We are of the opinion that the act of the Alabama Legislature of July 17, 1915, is contrary to the express purpose and scope of the mandatory act of Congress of March 4, 1915, and that as to engines engaged in interstate commerce it has no application."

Another case closely analogous to the case at bar is that of State v. Atlantic C. L. R. R. Co., ... Fla. ..., 87 So. Rep. 773, decided February 15, 1921. This case involved a section of the Transportation Act of 1920, the same act which we are here invoking, but a section of the act which is not here involved, namely, the section

amending section 6, subdivision 13-A of the Interstate Commerce Act.

The court says:

> "Until Congress acted, there could be no question of the power of the state over the matter in controversy. But when Congress exercised the power and lodged jurisdiction over it in the Interstate Commerce Commission, it took it out of the jurisdiction of the state, and the right of the state over the same subject matter was extinguished."

The court further says at page 778:

> "In the case of Missouri P. R. Co. v. Larrabee etc., the court recognized and sanctioned this doctrine, but found that there had been no action by Congress or the Interstate Commerce Commission and that therefore a state court may by mandamus compel a railroad company doing interstate business to afford equal local shipping service to its shippers, notwithstanding the cars in regard to which the service is claimed are eventually to be engaged in interstate commerce. From this it seems that if Congress had expressly lodged in the Interstate Commerce Commission the power and duty with regard to switching service, as it has with regard to requiring physical connection between rail and water transportation, the court would have held that the state was without authority to regulate the subject."

It cannot be that a state commission may order joint use of terminals—terminals used in

interstate commerce—and thus forestall and prevent the exercise of this power vested in the Interstate Commerce Commission.

The Language Used in the Transportation Act of 1920 Is Clear. No Reference May Be Had to Views of Individual Members of Congress nor to Committee Reports Where the Effect Would Be Only to Create Doubts, Which Do Not Now Exist.

In attempting to construe the Transportation Act as not conferring upon the Interstate Commerce Commission jurisdiction with respect to joint terminals, the petitioners brief at page 30 descends to a quotation from the Congressional Record, giving excerpts from the debate on the bill in the House of Representatives. Upon this point this court has expressed itself repeatedly to the effect that in construing an Act of Congress a court is not at liberty to recur to the views of individual members in debate.

Aldridge v. Williams, 3 How. 9;
U. S. v. U. P. R. Co., 91 U. S. 72;
District v. Washington, 108 U. S. 243;
Dunlap v. U. S., 173 U. S. 65;
Maxwell v. Dow, 176 U. S. 581,

and numerous other cases.

In Railroad Commission v. C. B. & Q. Railroad Company, 257 U. S. 563, this court in construing this very Transportation Act of 1920, said at page 243:

> "Great stress is put on the legislative history of the Transportation Act to show that the bill was not intended to confer on the commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute which in its language is doubtful or obscure. (Citing cases.) But when taking the act as a whole the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. (Citing cases.) Such aids are only admissible to solve doubt and not to create it."

Conclusion.

It is therefore submitted that the petition should be denied. That this conclusion is correct is recognized by the city of Los Angeles, one of the parties to this proceeding before the Railroad Commission and in the Supreme Court of the state of California, since it has already filed its petition with the Interstate Commerce Commission seeking an order such as it origin-

ally desired from the Railroad Commission of the state of California.

Respectfully submitted,

C. W. DURBROW,
E. W. CAMP,
A. S. HALSTED,
CHAS. H. BATES,
Attorneys for Respondent.

W. F. HERRIN,
Of Counsel.

APR 11 1923
WM. R. STANSBURY
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1922

No. 985 284

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (a corporation),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA, BRIEF IN SUPPORT THEREOF and NOTICE OF DATE FOR SUBMISSION THEREOF.

HUGH GORDON,
WILLIAM W. CLARY,
Flood Building, San Francisco,
Attorneys for Petitioner.

Subject Index

Page

Petition for Writ of Certiorari to the Supreme Court of the State of California 1

Opening statement 1

Summary of matter involved 3

Findings of the commission 6

Commission's order 6

Grounds of State Supreme Court's decision 7

The issue 8

Reasons relied on for the allowance of the writ 9

Appendix 11

Map (insert) ..... after page 14

Brief in Support of Petition for Writ of Certiorari 15

I. Statement of facts 15

II. Specification of errors relied upon 18

III. Argument 19

1. The amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots 19

2. If the amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the State Commission's order is valid unless the Interstate Commerce Commission makes an inconsistent order 32

Notice of date for submission 38

Admission of service 39

Table of Cases Cited

Page

Application of the Pearl Valley Railroad Company, 67 I. C. C. Rep. 748 2

Atlantic Coast Line Ry. v. State of Georgia, 234 U. S. 280; 50 L. Ed. 1312 3

California Public Utilities Act (Stat. 1915, ch. 91), Sec. 2 1

California Public Utilities Act (Stat. 1915, ch. 91), Sec. 36 ..... 9, 1

Cleveland etc. v. Illinois, 177 U. S. 514; 44 L. Ed. 868 .. 3

Congressional Record, Nov. 15, 1919 ..... 30, 3

Constitution of California, Art. XII, Sec. 22 1

Constitution of California, Art. XII, Sec. 23 1

Cooley v. Portwardens, 12 How. 316 3

In the Matter of the Application of the Philadelphia, Newtown & New York Railroad for a certificate of public convenience and necessity, 67 I. C. C. Rep. 252 .. 2

Interstate Commerce Act (as amended), Sec. 1 ..7, 19, 20, 23, 2

Interstate Commerce Act (as amended), Sec. 3 .....7, 19, 2

Interstate Commerce Act (as amended), Sec. 5 .....7, 19, 2

Interstate Commerce Act (as amended), Sec. 15a 7, 19, 2

Interstate Commerce Act (as amended), Sec. 17 3

Interstate Commerce Act (as amended), Secs. 18-22 inc. .

Missouri Pacific Railway Company v. Larrabee Flour Mill Company, 211 U. S. 612 .....19, 33, 3

Motor Transit Company v. Railroad Commission, 64 Cal. Dec. 278; 209 Pac. 586 2

Northern Pacific R. R. Co. v. Washington, 222 U. S. 370; 56 L. Ed. 237 ..... 35, 3

Oro Electric Company v. Railroad Commission, 169 Cal. 466; 147 Pac. 118 2

People ex rel. New York Central Company v. Public Service Commission, 233 N. Y. 113 3

Sturges v. Crowninshield, 4 Wheat. 193 3

Page

Texas v. Eastern Texas Railroad Co., U. S. Adv. Op. 1921-22, 313 22

Turner Creamery Co. v. Chicago, Milwaukee & St. Paul R. R., 154 N. W. 819; P. U. R. 1916A, 1083..... 29

United States v. Delaware and Hudson Co., 213 U. S. 366 32

U. S. Printing Co. v. Deering, U. S. Adv. Op. 1920-21, pp. 176, 182..... 32

Willson v. Black Bird Creek Marsh, 2 Pet. 251; 7 L. Ed. 414 35

NOTE.

In order to present the matter covered by the following petition it has been necessary to file three petitions for writs of certiorari. The titles of these three petitions are:

(1) *Railroad Commission of the State of California, Petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), Respondent.*

(2) *Railroad Commission of the State of California, Petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), Respondent.*

(3) *Railroad Commission of the State of California, Petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), Respondent.*

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. One original of this transcript has been filed in each case and fifty copies have been filed in the case of Railroad Commission v. Southern Pacific Company, etc.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (a corporation),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Your petitioner, the Railroad Commission of California, is a commission created and established by the Constitution of that state and vested by said Constitution and by statutes with the power to regulate and control railroads and other public utilities

doing business therein. Said commission was a party to a proceeding before the Supreme Court of California entitled *The Atchison, Topeka & Santa Fe Railway Company, a Corporation v. Railroad Commission of the State of California, et al., etc.* A decision in this proceeding was rendered December 19, 1922, became final January 18, 1923, and is reported in 64 California Decisions 557.

In this case certain state statutes and the authority of the Railroad Commission under these statutes to make regulations relative to depot facilities of railroads were drawn in question on the ground of their being repugnant to the Act of Congress of 1920, amendatory to the Interstate Commerce Act, and the decision of the California Supreme Court was against their validity.

The decision of the State Supreme Court holds that certain powers formerly vested by state laws in the Railroad Commission have been terminated by said Act of Congress and vested in the Interstate Commerce Commission. In our opinion the construction given said Act of Congress by said decision is erroneous. We also believe that the question here at issue is of more than local importance in that it involves the duties and powers of the Interstate Commerce Commission and the powers of every state to regulate and control service and facilities of railroads.

SUMMARY OF MATTER INVOLVED.

Los Angeles is a city having a population of about 600,000 inhabitants. It is served by three steam railroads doing both intrastate and interstate business, i. e., the "Southern Pacific", the "Atchison, Topeka & Santa Fe" and the "Los Angeles and Salt Lake". Each of these companies has a separate line of railroad running into said city crossing numerous public streets at grade and each has a separate passenger depot. There is attached to this Petition a map showing the location of the railroad lines of the three railroad companies involved in these cases.

In 1916 seven complaints against the three last named companies were filed with the Railroad Commission. Three of these complaints were filed by different so-called Civic and Improvement Associations in Los Angeles and four by adjacent municipalities whose citizens travel back and forth to and from Los Angeles. A copy of one of these complaints will be found in the transcript, page 7. It is sufficient here to state that all these complaints alleged that there are a large number of dangerous grade crossings of each of the three steam railroad lines over public streets and street and interurban electric railways and two of the complaints alleged that the existing passenger depot of each of the three railroad companies is inadequate and inconveniently situated. The relief asked by the various complaints included a general investigation of the whole railroad and terminal situation, the

separation or abolition of dangerous grade crossings, and the construction and use jointly by the three railroad companies of a union passenger depot.

Later the Southern Pacific and Salt Lake companies filed a joint application with the commission asking permission to rearrange their tracks so as to abolish some of the important grade crossings and to use jointly the present Southern Pacific station as a common passenger depot. The Santa Fe Company was not included in this proposed arrangement.

The seven complaints and the application were consolidated for hearing before the Railroad Commission and one final order was made as to all. The engineering investigation and hearings in the consolidated matter, including a rehearing had before the commission, extended over a period of more than four years.

In the evidence submitted by various engineers were four plans for a union depot at the area specified, all of which contemplated a joint use by all of the defendants of certain existing terminal facilities owned by each of them to such extent as would enable the carriers to use the proposed union station in the most convenient manner. There was also an inspection of the premises by the commission.

The final order of the commission made no finding to the effect that a joint use of existing facilities was required and no such joint use was ordered.

The commission in its final order stated:

"It was urged by the carriers that the order requiring a union passenger depot at the plaza is without support in the evidence and that the Commission disregarded the evidence of carriers and relied exclusively upon the report of the Commission's own engineer. The Commission has given this claim careful consideration. Five detailed plans for a union terminal were introduced in evidence by five different witnesses. They were the Hawgood plan, the Barnard plan, the Storrow plan, the Southern Pacific-Salt Lake plan and the Sachse plan. With the exception of the Southern Pacific-Salt Lake plan, all of these plans called for a union passenger depot at the plaza, but differed as to the exact location of the depot and the arrangement of tracks, approaches, etc. In addition to these, the so-called Arnold report was introduced and there was much other evidence, all supporting the general proposition that a union depot at the plaza was necessary. The Commission did not rely solely on the report of its own engineer, nor did it adopt the Sachse plan in all its particulars, but, in accordance with the overwhelming preponderance of the evidence, the Commission did order a union depot at the general site of the plaza, and left the exact location of the depot, tracks, approaches, etc., to be determined by the carriers themselves, subject only to the final approval of the Commission."

The final order of the commission was made December 6, 1921. (Tr. pp. 131-152 inc.)

FINDINGS OF THE COMMISSION.

This order was based upon certain findings of fact which may be condensed and summarized as follows:

Certain grade crossings of the Southern Pacific, Santa Fe, and Salt Lake railroads are unsafe and public safety, convenience and necessity require their elimination.

The passenger stations of said railroad companies are inadequate to meet the public needs both in the matter of depot facilities and in connection with the elimination of grade crossings.

In order to eliminate the certain grade crossings enumerated *and* secure to the public the adequate and convenient union passenger terminal facilities which it requires, it is necessary that a union station be erected within an area specified.

COMMISSION'S ORDER.

The order itself was specific and required certain definite things to be done. Briefly these were:

The procurement jointly by the three carriers of grounds for a union depot within the area specified.

The filing of plans and specifications jointly by the three carriers for the construction of an adequate union passenger depot. (Provisions were made in the order as to apportionment of cost and time of construction.)

The actual construction of the depot in accordance with approved plans.

The elimination of 17 specified grade crossings on the Southern Pacific line by the cessation of train operations longitudinally at grade along and upon a certain street. (Alameda Street.)

The elimination of 6 specified grade crossings on the Santa Fe and Salt Lake lines by the construction of viaducts.

Each of the three carriers obtained from the Supreme Court of California a writ of review directed to the Railroad Commission to review the proceedings and order above described. The three proceedings raised almost identical questions and were treated by the State Supreme Court as one case. However, they were separate cases and for that reason it has been necessary to petition for three writs of *certiorari* here. The petitions are identical and the same transcript of record is used in all these cases.

GROUNDS OF STATE SUPREME COURT'S DECISION.

The Supreme Court of California ruled that the Railroad Commission might exercise jurisdiction over the matter of eliminating grade crossings, but that full power and authority over the matter of union terminal depot facilities has been vested in the Interstate Commerce Commission by the Act of 1920, amendatory to the Interstate Commerce Act.

The decision of the state Court consisted largely of a résumé of Sections 15a, Section 5, Section 1, subdivisions 18 to 22, inclusive, and Section 3 of the

Interstate Commerce Act as amended. The conclusion of the Court from this summary is completely expressed in the last paragraph of the decision which we quote:

> "(1) From the foregoing excerpts from the Act of Congress of 1920, amendatory of the Interstate Commerce law and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein has been vested in the Interstate Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein. This disposition of the primary inquiry involved in these proceedings renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein."

The Supreme Court of California is the Court of last resort in this state and there is no appeal from its decision except to this Court.

THE ISSUE.

The issue thus presented is one of jurisdiction.

Public necessity requires that a depot be built in Los Angeles. Who has jurisdiction to order the

railroads to furnish this facility, the state or the National government?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The authority of the Railroad Commission under state law to make regulations relative to union depots was drawn in question on the ground of its being repugnant to the Interstate Commerce Act, and the decision of the state Court was against its validity.

This decision was erroneous for the following reasons:

The California commission has authority under state law (Stat. 1915, Chap. 91, Sec. 36) to order the three carriers to erect a union depot. Prior to the enactment of the Transportation Act the carriers themselves admitted this to be so.

The Amendments of 1920 to the Interstate Commerce Act vest no jurisdiction in the Interstate Commission relative to the construction and use of new union depots.

The proviso at the end of paragraph 17, of Section 1 of the interstate act specifically reserves to the states the right to exercise its police powers "to require just and reasonable passenger service for intrastate business" except in so far as any state requirement may conflict with a lawful order of the Interstate Commission. (This proviso was not adverted to in the decision of the state Court.)

The Interstate Commission has made no order of any kind touching the matters here involved.

Wherefore your petitioner respectfully prays that a writ of *certiorari* may issue out of and under the seal of this Honorable Court directed to the Supreme Court of the State of California, commanding said Court to certify and send to this Honorable Court for its review and determination on a day certain to be therein designated, a full and complete transcript of the record in the proceeding in said Supreme Court of the State of California, entitled: *The Atchison, Topeka & Santa Fe Railway Company, a Corporation, Petitioner, v. Railroad Commission of the State of California, et al., Respondents*, L. A. No. 7166, pursuant to the Act of September 6, 1916, and that said judgment of said Supreme Court of the State of California may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

Dated, San Francisco,
March 21, 1923.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

HUGH GORDON,
WILLIAM W. CLARY,
Its Attorneys, San Francisco, California.

Appendix.

Extracts from Constitution of California:

Art. XII, Sec. 22. There is hereby created a Railroad Commission which shall consist of five members and which shall be known as the Railroad Commission of the State of California.

Art. XII, Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the legislature, and every class of private corporations, individuals, or association of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the Railroad Commission respecting pub-

lic utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution.

Extracts from Public Utilities Act, Statutes 1915, p. 115:

Sec. 2. (*i*) The term "railroad," when used in this act, includes every commercial, interurban and other railway other than a street railroad, and each and every branch or extension thereof, by whatsoever power operated, together with all tracks, bridges, trestles, rights of way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment, and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

(*j*) The term "railroad corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever, owning, controlling, operating or managing any railroad for compensation within this state.

(*l*) The term "common carrier," when used in this act, includes every railroad corporation; street railroad corporation; express corporation; dispatch, sleeping car, dining car, drawing room car, freight, freight-line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever, operating for compensation within this state.

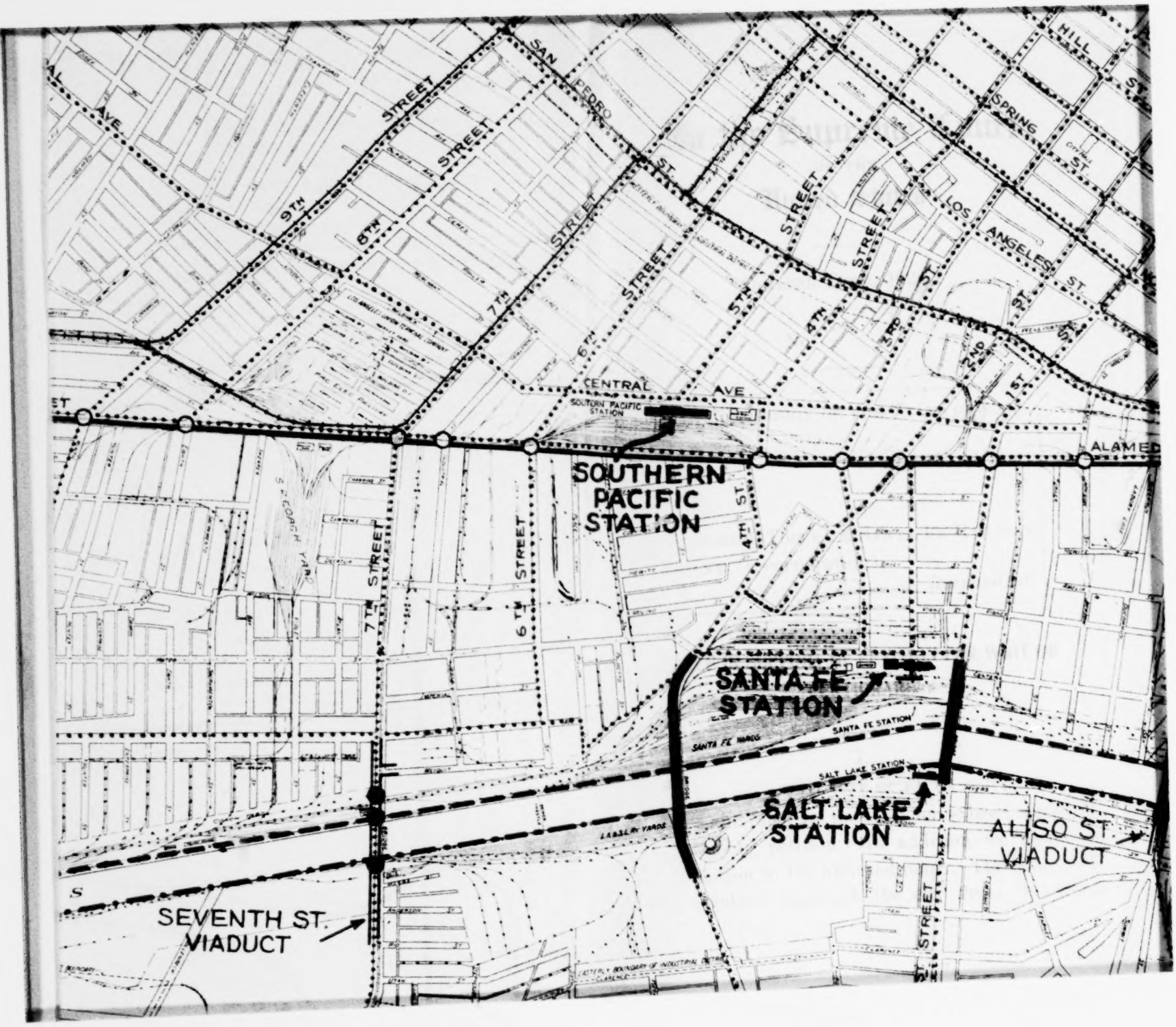
(*dd*) The term "public utility," when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph cor-

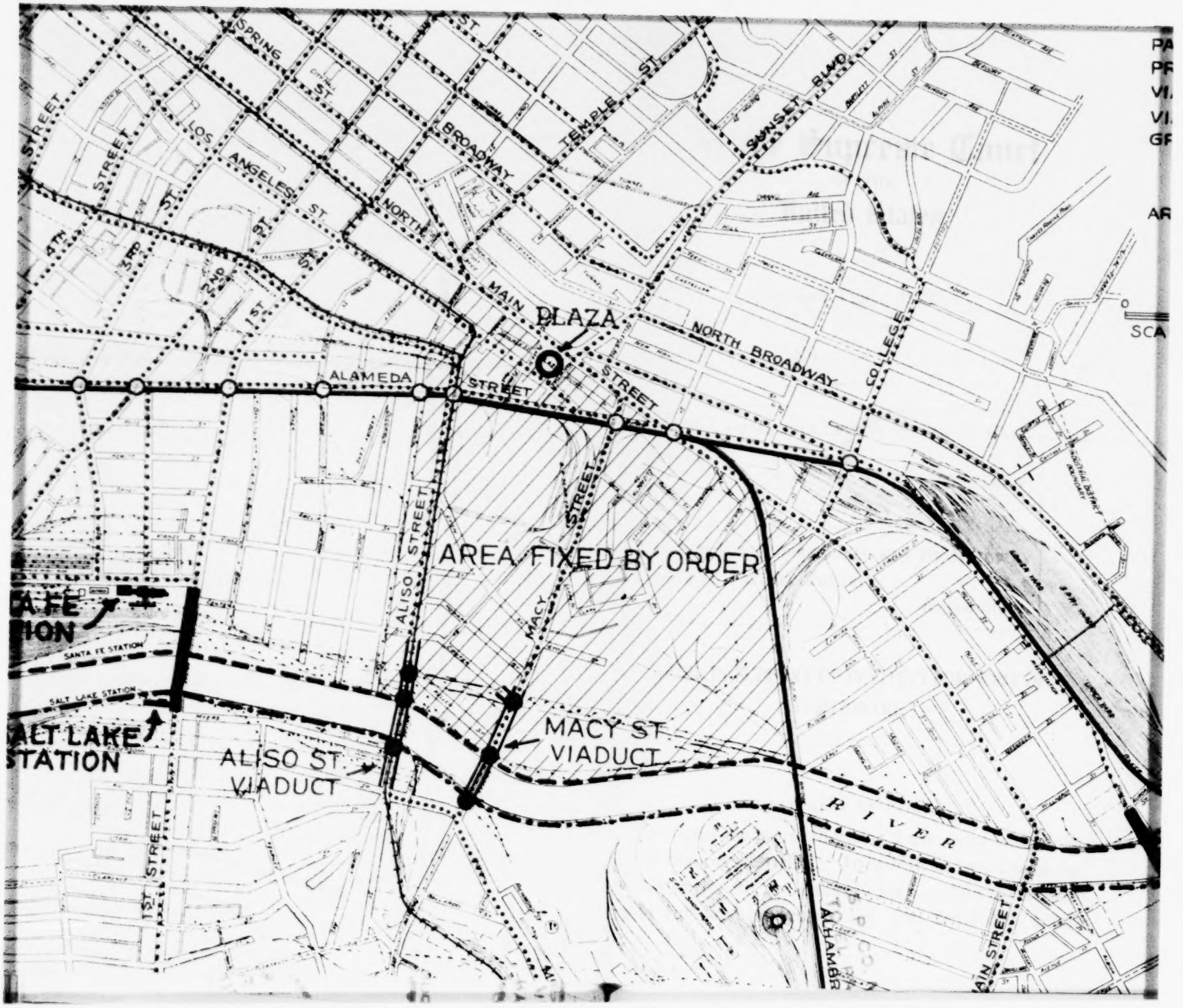
poration, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof.

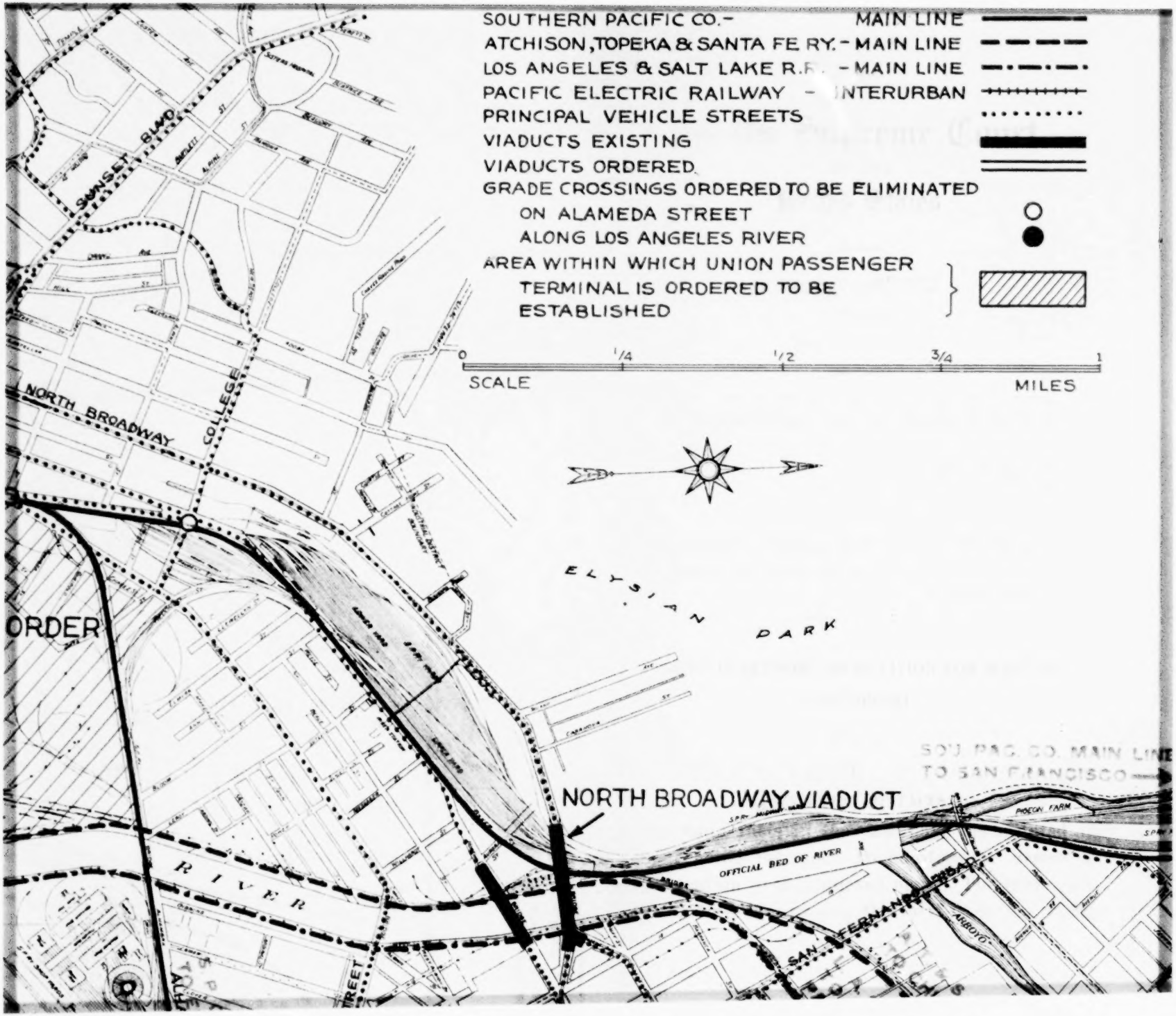
SEC. 36. Whatever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or ap-

portionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

14TH
ALAMEDA
VERNON
LOS ANGELES
(SPUR)
9TH
SANTA FE AVE.
L O S A N G E L


SOUTHERN PACIFIC STATION
SANTA FE STATION
SALT LAKE STATION
ALISO ST. VIADUCT
SEVENTH ST. VIADUCT
CENTRAL AVE
SOUTHERN PACIFIC STATION
SANTA FE STATION
SANTA FE YARDS
SALT LAKE STATION
LASSEN YARDS
7TH STREET
6TH STREET
4TH ST.
SAN PEDRO ST.
SPRING ST.
HILL ST.
LOS ANGELES ST.
ALAMEDA
9TH STREET
8TH STREET
7TH STREET
6TH STREET
5TH STREET
4TH STREET
3RD ST.
2ND ST.
1ST ST.


SPRING ST.
BROADWAY
TEMPLE ST.
SUNSET BLVD.
LOS ANGELES ST.
NORTH MAIN ST.
MAIN PLAZA
NORTH BROADWAY
COLLEGE
ALAMEDA STREET
ALISO STREET
MACY STREET
AREA FIXED BY ORDER
SANTA FE STATION
SALT LAKE STATION
ALISO ST. VIADUCT
MACY ST. VIADUCT
1ST STREET
RIVER
MAIN STREET


SOUTHERN PACIFIC CO.- MAIN LINE
ATCHISON, TOPEKA & SANTA FE RY. - MAIN LINE
LOS ANGELES & SALT LAKE R.R. - MAIN LINE
PACIFIC ELECTRIC RAILWAY - INTERURBAN
PRINCIPAL VEHICLE STREETS
VIADUCTS EXISTING
VIADUCTS ORDERED
GRADE CROSSINGS ORDERED TO BE ELIMINATED
ON ALAMEDA STREET
ALONG LOS ANGELES RIVER
AREA WITHIN WHICH UNION PASSENGER TERMINAL IS ORDERED TO BE ESTABLISHED
0 1/4 1/2 3/4 1
SCALE
MILES
SUNSET BLVD
NORTH BROADWAY
COLLEGE
ELYSIAN PARK
ORDER
NORTH BROADWAY VIADUCT
RIVER
OFFICIAL BED OF RIVER
SAN FERNANDO
ARROYO
POSEN FARM

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (a corporation),
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

STATEMENT OF FACTS.

The main facts in the case have been stated in the foregoing petition. In addition we desire to call attention to the annexed map. The three railroads involved approach the city from the north

and come together at a point marked "North Broadway Viaduct" near the top of the map. All three roads pass under this viaduct. From this point the "Salt Lake" and "Santa Fe" lines follow the bed of the Los Angeles River crossing important public highways at grade at Macy Street, Aliso Street and Seventh Street. The order of the commission requires these grade crossings to be eliminated by the construction of viaducts at the points marked on the map "Macy St. Viaduct", "Aliso St. Viaduct" and "Seventh St. Viaduct."

The Southern Pacific line from San Francisco does not follow the river bed but turns after passing under the North Broadway Viaduct and runs in a southwesterly direction till it reaches the north end of Alameda Street. From that point it runs directly south through the city on Alameda Street at grade all the way. The Southern Pacific line from El Paso comes into the city from the east on the avenue marked Alhambra Avenue. It joins the other line just north of "plaza". Alameda Street is a main highway or thorofare through the city and one of the most heavily traveled streets in the city. All the main line traffic of the Southern Pacific lines both from east and north run through Los Angeles at grade longitudinally upon and along this street the rails being flush with the pavement most of the way. Alameda Street is also crossed by 17 other public streets at grade. Some of these are very heavily traveled streets and several of

them carry street and electric interurban cars which cross the Southern Pacific tracks at grade. These crossings are marked by hollow red circles on the map. The commission ordered the Southern Pacific Company to eliminate these grade crossings by removing all traffic from Alameda Street except limited switching movements at night.

The district marked on the map with red diagonal lines and designated "area fixed by the order" is the district within which the carriers were ordered to construct a union depot. It is referred to in the record frequently as the "plaza site" the plaza being a small park in one corner of this area.

It will be seen that the Salt Lake and Santa Fe lines border this designated area and there would be no difficulty in constructing approaches to a union depot from the main lines of these roads. It will also be seen that the San Francisco and El Paso lines of the Southern Pacific pass directly thru this area so that a depot in this area would be easily approached by these lines. The Southern Pacific traffic from the south comes into the city at a point marked "To San Pedro and Santa Ana." But a small proportion of the total Southern Pacific traffic comes in from this direction. It is obvious from an inspection of the map that this southerly traffic can reach the proposed depot site in at least three different ways; by a new line which the Southern Pacific might construct along the river bed reaching the depot in the same way that the southerly lines of the Salt Lake and Santa Fe

reach it; by some arrangement with either the Salt Lake or Santa Fe for a joint use of tracks for southerly traffic; by an amendment to the commission's order permitting the southerly traffic to come into the depot upon the present tracks along Alameda Street.

The order of the commission did not designate any specific plan but required the carriers to prepare their own plans. This has not yet been done.

II.

SPECIFICATION OF ERRORS RELIED UPON.

The errors upon which petitioner relies for the issuance of the writ and for reversal of the judgment were outlined in the foregoing petition. For convenience we will briefly restate them.

The California commission has authority under state law (Section 36, Public Utilities Act, see appendix) to order the three railroad companies to erect a union depot.

The state Court erroneously construed the federal statute amendatory of the Interstate Commerce Act as having deprived the state of this jurisdiction and vested it in the Interstate Commerce Commission.

The state Court failed to give effect to the proviso of Section 1, paragraph 17 of the amended Interstate Commerce Act and to the principle an-

nounced in the case of *Missouri Pacific Railway Company v. Larrabee Flour Mill Company,* 211 U. S. 612.

The subject will be discussed under two heads:

1. The amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots.

2. If the amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the state commission's order is valid unless the interstate commission makes an inconsistent order.

III.

ARGUMENT.

1. The Amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots.

The state Court based its decision that the interstate commission has exclusive jurisdiction over union depot facilities mainly upon Section 15a; Section 5, paragraphs 4 and 5; Section 1, paragraphs 3, 10, 1, 18, 21, 22; Section 3, paragraphs 3 and 4 and Section 1, paragraph 20, of the Amended Interstate Commerce Act. A brief reference to these provisions in the order discussed by the state Court is essential.

Section 15a. This section is referred to only as showing generally the greatly enlarged powers of the interstate commission and its affirmative duty to maintain an adequate railway service for the people of the United States.

Section 5. (Pars. 4 and 5.) These paragraphs relate to the general plan for the consolidation of railway properties of the United States into a limited number of systems. They are quoted in the decision as being expressive of the enlarged scope and purposes of the Act.

Section 1. (Pars. 3 and 10.) These provisions are referred to to show the definitions of the terms "railroad" and "car service."

None of the sections thus far mentioned make any reference to depots or terminal facilities.

Section 1. (Par. 1.) This section refers only to cases where the commission is of the opinion that an emergency exists. It gives the interstate commission powers when an emergency exists to (a) suspend established rules, (b) to make directions relative to car service, (c) to require joint use of terminals, including main line tracks for a reasonable distance outside of such terminals. This language does not authorize the interstate commission to require the erection of a new union depot for permanent use but refers to the joint use during emergencies of existing terminals. In the present case an emergency did not exist and the state

commission did not order the joint use of any existing terminal or any main line tracks.

Section 1. (Par. 18.) This provision refers to the construction, extension and abandonment of railroad lines and provides for the issuance of certificates of public convenience and necessity therefor. It was fully considered by this Court in *Texas v. Eastern Texas Ry. Co.*, U. S. Adv. Ops. 1921-22, p. 313. In the argument before the state Court and in the Court's decision, considerable importance was attached to this paragraph because the order of the state commission requires in connection with the elimination of grade crossings, the abandonment of certain traffic on Alameda Street within the City of Los Angeles. It was said that subdivision 18 of Section 1 deprived the state of the power to require the abandonment of any part of a line of railroad.

Reference to the actual order (Transcript, pp. 142-151 inc.) will show that the commission ordered neither the construction or abandonment of a "line of railroad." True, the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned. Reference to the map annexed to the petition will show that the amount of new track necessary to construct to enable the three roads to reach the area specified for the depot is very small. When it is all done there will be no change in the service

rendered to the public except that it will be improved.

The Interstate Commerce Commission has held that relocations of trackage of the kind here in question, where the changes have no effect on the service to the public, do not constitute either the construction or abandonment of "lines of railroad" within the meaning of par. 18, Sec. 1 of the Interstate Commerce Act.

> *In the matter of the Application of the Philadelphia, Newtown & New York Railroad for a certificate of public convenience and necessity, 67 I. C. C. Rep. 252, decided March 11, 1921.*
>
> *Application of the Pearl Valley Railroad Company, 67 I. C. C. Rep. 748, decided June 14, 1921.*

In the latter case 2.62 miles of main line track were abandoned but inasmuch as the service to the public was not affected no certificate was deemed necessary.

This construction is further borne out by the case of *Texas v. Eastern Texas Railroad Co.* (U. S. Adv. Op. 1921-22, 313). This Court in that case had before it paragraph 18, Section 1, of the Interstate Commerce Act. The question was, to what extent the interstate commission had jurisdiction under the amendments of 1920 over the abandonment of a railroad doing both interstate and intrastate commerce.

Referring to paragraph 18 and subsequent provisions, the Court said:

> "By them Congress has undertaken to regulate the construction and acquisition of new or additional lines of railroad and the extension and abandonment of old lines."

The "line of railroad" which the Court was discussing was a line 30 miles long. Its abandonment meant that a large territory and many people would cease to have any railroad service (by the road in question) at all.

The Supreme Court referred to the application as "an application for a certificate authorizing it to abandon and cease operating its road." This implies a complete cessation of service. Here, the carriers will not abandon or cease operating their roads or any part of them. They will merely shift their lines in such a way as to carry on the same operations they do now, but with more safety and convenience to the public.

Section 1. (Pars. 21 and 22.) Paragraph 21 authorizes the interstate commission to require any carrier to provide adequate facilities for performing "its car service as that term is defined in the Act" and to extend its line or lines. The term "car service" is defined in paragraph 10 of Section 1 and has to do with the supply, distribution and exchange of cars and locomotives. The clause as to extension of lines is similar to that found in paragraph 18 of Section 1, except that paragraph 18 applies to cases where permission to extend is

sought by the carrier and paragraph 21 applies to cases where the carrier is ordered to extend by the commission upon its own initiative or upon complaint. In neither case is a mere rearrangement of existing trackage an extension of a "line of railroad" within the meaning of these provisions. Paragraph 22 exempts from the authority of the commission, conferred by paragraphs 18 to 21 inclusive, all construction or abandonment of spurs, industrial tracks, etc., located wholly within one state.

Section 3. (Paragraphs 3 and 4.) Paragraph 3 refers to the interchange of traffic between different carriers. It was not claimed in any of the briefs before the state Court that the order of the state commission requires any interchange of traffic and in our opinion this paragraph has no bearing on the issue before the Court.

Paragraph 4 refers to existing terminal facilities. The paragraph reads as follows:

> "If the commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree on such terms as the commission may fix as just and reasonable for the use so required, to be

ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

A comparison of this paragraph with Section 36 of the California Public Utilities Act will show that there is no conflict or inconsistency between them. Paragraph 4 refers to a "carrier owning or entitled to the enjoyment of terminal facilities." It provides for the use of the "terminal facilities including main line track for a reasonable distance outside such terminal" of one carrier by another carrier. It provides that "the carrier whose terminal facilities are required to be so used" may recover compensation. These expressions plainly mean existing terminal facilities. The order of the state commission requires the erection of a new union terminal at a new site, considerably removed from any of the existing depots. Obviously there

can be no joint use of the existing terminals of one carrier by another under this order. Instead, the matter falls within the terms of Section 36 of the California Act. In this statute there is specific provision for the erection of "a new structure or structures"; for "fixing the site thereof" and for "joint action" in erecting any "new structure."

It may be claimed that the state commission's order cannot be obeyed without a joint use of certain existing facilities such as main line tracks; and that the order is for that reason repugnant to the provisions of paragraph 4. This claim is based solely on the fact (set forth in the petition) that four plans for a depot at the site finally designated were proposed by witnesses and all these plans provided for some joint use of main line trackage. As stated in the decision of the commission (see Petition p. 5) and as is obvious from the commission's order the commission did not order the railroad companies to carry out any of these proposed plans. It simply ordered them to construct a depot somewhere within a large area according to plans which they themselves were to prepare. To say that no possible plan for a union depot can be devised which does not require a joint use of tracks is merely to speculate in advance of any attempt to prepare final plans. We may concede that the carriers would find it less expensive to comply with the order if they would arrange for some joint use of trackage. The witnesses who presented the plans referred to were

not considering the effect paragraph 4, Section 3 of the Interstate Commerce Act might have on the jurisdiction of the state commission if a joint use of tracks was had; they were merely considering the simplest way from an engineering standpoint of rearranging the tracks so as to bring the various lines to the proposed depot site and eliminate the grade crossings on Alameda Street. These plans were prepared and submitted at hearings held prior to the enactments of 1920. At that time the question of constructing a depot without joint use of tracks was not being considered. Subsequent to 1920 the commission inspected the premises and maps and made its order. An inspection of the map attached to the petition herein will show clearly that there is no obstacle to the construction of a union depot within the area designated without the joint use of existing tracks or other facilities. In view of the facts that no joint use of facilities was ordered by the commission; that no final plans have been prepared and that no attempt has been made to comply with the order, we submit that the objection that the order is repugnant to paragraph 4 of Section 3 because it will necessitate a joint use of tracks is wholly inconsistent and unfounded.

Section 1. (Paragraph 20). The last reference made by the state Court to the interstate act is to paragraph 20, Section 1. This paragraph prohibits the railroads from making any constructions or abandonments of lines of railroad without the

consent of the interstate commission. The prohibitions of the paragraph refer expressly to paragraphs 18 and 19 of Section 1. They do not refer to existing terminal facilities which are covered by Section 3, paragraph 4. The state Court erroneously construed paragraph 20 to apply to "the extension of railroad facilities and the abandonment of other railroad facilities, *including terminals.*" Upon this erroneous construction the Court based its conclusion that Congress has fully occupied the field of regulation "of the extension of terminal facilities."

The Court also erroneously construed the commission's order as requiring extensions and abandonment of lines of railroad. As already shown the order required no construction or extension of new lines or abandonment of old lines within the meaning of the act as construed by the interstate commission. Nor did the order require any joint use of facilities. The prohibitions of Section 20 therefore do not terminate the power of the state commission to make the order which it did make.

We have discussed all the sections of the interstate act relied upon by the Court and submit that not one of them vests in the interstate commission the power to order carriers to erect a new union depot or deprives the state of the power to do so. The fact that many kinds of regulations are specifically provided for in the act, as for instance interchange of traffic, switch connections, car service, securities, extensions into new territory, consolidation

of lines, etc., while the act is silent as to any regulation concerning new union depots indicates that the latter are not covered by the act. The familiar principle that the mention of specific matters excludes others is applicable here and excludes any possibility of the jurisdiction over new union depots being conferred on the interstate commission by the general provisions referred to in the above resume as being indicative of the scope of the act.

If, after plans are prepared for a union depot in compliance with the state commission's order, it should be deemed advisable to invoke the jurisdiction of the Interstate Commerce Commission in connection with any part of the work such as a joint use of tracks or for the issuance of securities, there is no reason why application therefor cannot be made to the interstate commission at that time. The present validity of the state commission's order is not affected by this possibility. Under well settled state law an order of the Railroad Commission is not invalid merely because the order cannot be carried out until some other public authority takes additional or concurrent action.

Motor Transit Company v. Railroad Commission, 64 Cal. Dec. 278, 209 Pac. 586;

Oro Electric Company v. Railroad Commission, 169 Cal. 466, 147 Pac. 118;

Turner Creamery Co. v. Chicago, Milwaukee & St. Paul R. R., 154 N. W. 819, P. U. R. 1916 A 1083.

It is our belief that the provisions of the Act above referred to are so clear that there can be no doubt as to their meaning. We are mindful of the rule that when the language of an act is clear to the Court, the legislative history of the act cannot control the interpretation. If, however, there should exist any doubt in the mind of the Court as to whether the sections above outlined deprive the state of its jurisdiction relative to union depots, we ask the Court's attention to the Congressional Record of November 15, 1919.

While the Esch-Cummins bill was being debated on the floor of the House of Representatives, Congressman McClintic of Oklahoma offered the following amendment (Congressional Record, November 15, 1919, p. 9067):

> "Provided, further, that the Commission is hereby given authority to require a carrier to maintain its present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission."

The purpose of this amendment, as explained by Congressman McClintic (pp. 9067, 9068), was to give the Interstate Commerce Commission jurisdiction over union passenger depots, largely for the purpose of preventing the railroad companies from tearing apart the unification of passenger depots so extensively established by the Government during

the federal operation of the railroads. Chairman Esch opposed the adoption of the amendment on the ground that jurisdiction over such matters had always been vested in the various states and should continue to be exercised by them. Chairman Esch said (Congressional Record, November 15, 1919, p. 9068):

> "Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several states. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matter of depots and joint use of depots is practically in the jurisdiction of the state commissions and all but one of the states have such commissions. In such small matters the detail should be left within the jurisdiction of the state authorities, who know the situation, know the conditions and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals."

Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected (Congressional Record, November 15, 1919, p. 9071), thereby clearly indicating an intention that jurisdiction over union passenger depots should not be taken away from the states.

The above quotations refer only to the rejection of the amendment on the floor of Congress and to the

statement of the chairman of the committee having the bill in charge. It has been held that the courts may look to both these sources when in doubt as to the meaning of a statute.

United States v. Delaware & Hudson Co., 213 U. S. 366;

U. S. Printing Co. v. Deering, U. S. Adv. Op. 1920-21, pp. 176, 182.

2. If the Amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the State Commission's Order is valid unless the Interstate Commission makes an inconsistent order.

In all its discussion of the amended Interstate Commerce Act the state Court made no mention of the proviso at the close of paragraph 17, Section 1. This proviso reads as follows:

> "Provided, however, that nothing in this act, shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission made under the provisions of this act."

This proviso in plain terms preserves the police power of the state to require just and reasonable freight and passenger service for *intrastate* business. The fact that a carrier may also be engaged largely in interstate business does not deprive the state of this reserved power *unless* the state makes a requirement that is

"inconsistent with any lawful order of the commission (interstate) made under the provisions of this act."

The order made by the California commission was to require just and reasonable service of three railroads engaged largely in intrastate business. This order was certainly not inconsistent with any lawful order of the Interstate Commerce Commission for the obvious reason that the interstate body has made no order at all. Until it makes an order and unless the requirement of the state commission conflicts with that order, the state will retain full power to require just and reasonable passenger service of any railroad doing intrastate business regardless of the fact that such road also does interstate business.

The proviso in paragraph 17 is in effect a congressional enactment of the principle announced in *Missouri Pacific Ry. Co. v. Larrabee Flour Mill Co.*, 211 U. S. 612, viz., that even when Congress has entered a particular field of interstate commerce and has authorized the Interstate Commerce Commission to exercise jurisdiction therein, nevertheless unless the matter is one to be handled by general rule or regulation, the states may continue to act as to particular situations unless and until the interstate commission takes action as to such particular situations.

In the Larrabee case the state Court, by a writ of mandamus, ordered the Missouri Pacific Railroad Company to transfer and return cars loaded and unloaded from the line of the Santa Fe Railroad to

the mill and elevator of the Larrabee Flour Mills Company. The Missouri Pacific line was engaged in interstate commerce and about three-fifths of the flour of the mill company was shipped out of the state.

The contention was made that the Missouri Pacific and Santa Fe companies were common carriers engaged in interstate commerce, and, as such, were subject to the control of Congress, and therefore not amenable to the power of the state. At that time (1908), the Interstate Commerce Act was in force and the Interstate Commerce Commission had power to act in respect to the particular matters involved.

On principle, therefore, the situation was identical with that here under discussion. A requirement relative to service had been made by the state. The railroad involved was engaged largely in interstate commerce. In fact, the requirement made by the state acted directly upon interstate commerce. Congress had acted by creating the Interstate Commerce Commission and *resting it with full power to regulate the very matter which was at issue.*

This Court said:

> "On the other hand, it is said that Congress has already acted,—has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has intrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. Congress could always regulate interstate commerce, and could make specific provisions in reference

thereto, and yet this has not been held to interfere with the power of the state in these incidental matters. A mere delegation by Congress to the commission of a like power has no greater effect, and does not of itself disturb the authority of the state. It is not contended that the commission has taken any action in respect to the particular matters involved. It may never do so, and no one can, in advance, anticipate what it will do when it acts."

In the present instance the state Court, in its decision, said that this case of *Missouri v. Larrabee* is inapplicable because it was decided in 1909, several years prior to the attempt on the part of Congress to invest the Interstate Commerce Commission with jurisdiction over extensions or changes in interstate railroad lines.

The power of Congress to regulate interstate commerce, although supreme and exclusive, remains dormant until actually exercised. (Chief Justice Marshall in *Willson v. Black Bird Creek Marsh*, 2 Pet. 251; 7 L. ed. 414.) But the mere enactment of laws by Congress does not arouse this dormant power unless those laws are of such nature as to exclude any action by the states.

Cooley v. Port Wardens, 12 How. 316;

Sturges v. Crowinshield, 4 Wheat. 193;

Cleveland etc. v. Illinois, 177 U. S. 514; 44 L. ed. 868;

No. Pac. R. R. Co. v. Washington, 222 U. S. 370; 56 L. ed. 237;

Atl. Coast Line Ry. v. State of Georgia, 234 U. S. 280; 50 L. ed. 1312.

A law of Congress forbidding train crews to remain on duty more than 16 consecutive hours was a complete exercise of the dormant power to regulate that phase of the interstate commerce. Nothing remained to be done to make the law effective. It applied instantly to every train crew on every train engaged in interstate commerce regardless of the fact that such a crew might at the same time be engaged in intrastate commerce. No hearing by a commission or findings and orders were necessary. Nothing the state could do would add to or take away from the scope of the requirement. The hitherto dormant power of Congress was fully exercised, and this field of regulation fully occupied. (*No. Pac. R. R. Co. v. Washington*, 222 U. S. 370.)

Not so with depots. Before a depot can be required there must be an investigation of particular conditions and hearing, findings and a specific order must be made. Congress might conceivably do this itself. But if it delegates this power to a subordinate commission, still the power remains dormant until that subordinate commission exercises it.

In the *Larrabee* case Congress had delegated to the Interstate Commerce Commission powers of control over the particular matter in question. But that commission had not acted, and, as the Court said, it might never act, therefore, the federal power still remained dormant, and the state was free to make those regulations conducive to the welfare of its citizens. We submit that what the Court said in the *Larrabee* case applies as well to the delegations

of power made by Congress in the Act of 1920 as to those made by earlier enactments.

The case chiefly relied upon by the state Court is *People ex rel New York Central Railroad Company v. Public Service Commission,* 233 N. Y. 113. It was cited as a case approaching identity with the case at bar. In that case the state commission ordered two railroads to make track connections to permit interchange of freight.

We submit that the case is not in point because Section 3 of paragraph 3 of the Interstate Act as amended specifically provides for the interchange of traffic and the New York Court held that the New York law did not authorize the state commission to make such a requirement. Here the situation is exactly opposite. The interstate act does not provide for new union depots and the California law specifically does so.

For the reasons above set forth petitioner respectfully asks that the petition for a writ of *certiorari* be granted.

Dated, San Francisco,
March 21, 1923.

Respectfully submitted,

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

NOTICE OF DATE FOR SUBMISSION.

To The Atchison, Topeka & Santa Fe Railroad Company, Respondent herein and to E. W. Camp and M. W. Reed, Esqs., Los Angeles, California, its Attorneys:

Please take notice that the foregoing petition for writ of certiorari will be presented to the Supreme Court of the United States on Monday, the 16th day of April, 1923.

Dated, San Francisco,
March 21, 1923.

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

ADMISSION OF SERVICE.

Due service and receipt of a copy of the within petition for writ of certiorari to the Supreme Court of the State of California, brief in support thereof and notice of date for submission thereof is hereby admitted this 23rd day of March, 1923.

E. W. CAMP,
M. W. REED,
Attorneys for Respondent.

Copy

FILED
APR 18 1923
W. B. STANSBURY
CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No. ~~965~~ 84

Railroad Commission of the State of California,

Petitioner,

vs.

Atchison, Topeka & Santa Fe Railway Company (a Corporation),

Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

C. W. DURBROW,
E. W. CAMP,
A. S. HALSTED,
CHAS. H. BATES,
Attorneys for Respondent.

W. F. HERRIN,
Of Counsel.

Parker, Stone & Baird Co., Law Printers, 233 New High St., Los Angeles.

SUBJECT INDEX.

PAGE

Abandonment of Existing Facilities 4

Extensions and Joint Trackage Arrangements Necessary Under the Railroad Commission's Order 5

Corrections in Petitioner's Statement of Facts 8

The Transportation Act of 1920 Vests in the Interstate Commerce Commission Sole Power and Authority to Order or Permit Joint Use of Railroad Facilities. That Field Is Thereby Completely Occupied, to the Exclusion of Any Right of State Commissions to Act in the Premises 9

The Language Used in the Transportation Act of 1920 Is Clear. No Reference May Be Had to Views of Individual Members of Congress Nor to Committee Reports Where the Effect Would Be Only to Create Doubts, Which Do Not Now Exist 15

Conclusion 16

TABLE OF CASES.

Aldridge v. Williams, 3 How. 9 15

Akron, Canton & Youngstown Railway Company *et al.*, v. The United States *et al* 9

District v. Washington, 108 U. S. 243 15

Dunlap v. U. S., 173 U. S. 65 15

Louisville and Nashville v. The State, 16 Ala. App. 199, 76 So. Rep. 505 12

Maxwell v. Dow, 176 U. S. 581 15

Missouri etc. v. Larrabee etc., 211 U. S. 612, 53 L. Ed. 352 10

PAGES

New York Central Railroad Company v. Public Service Commission of the State of New York, 198 Appellate Division 436, 191 New York Supplement 636 12

People v. Public Service Com. (Court of Appeal, New York), 233 N. Y. 113, 135 N. E. 195..... 11

Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Company, 257 U. S. 563.... 9

Railroad Commission v. C. B. & Q. Railroad Company, 257 U. S. 563..... 16

State v. Atlantic C. L. R. R. Co., ... Fla. ....., 87 So. Rep. 773 13

U. S. v. U. P. R. Co., 91 U. S. 72..... 15

NOTE.

The petitioner, Railroad Commission of the state of California, has filed three petitions for writs of certiorari to the Supreme Court of the state of California, entitled as follows:

(1) Railroad Commission of the state of California, petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), respondent.

(2) Railroad Commission of the state of California, petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), respondent.

(3) Railroad Commission of the state of California, petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), respondent.

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. An original of this brief is therefore filed in each of the three cases, together with the usual number of copies. These bear the titles, however, of the proceedings in which filed.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No.....

Railroad Commission of the State of California,

Petitioner,

vs.

Atchison, Topeka & Santa Fe Railway Company (a Corporation),

Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

While a respondent is not required by the statutes or rules of court to file a brief in answer to a petition for a writ of certiorari, the

instructions relative to applications for writs of certiorari, under the Acts of March 3rd, 1891, and September 6th, 1916, contemplate his doing if he so desires. In this case the respondent deems it desirable to do so, primarily for the purpose of pointing out just what facilities of the railroads will have to be abandoned if the order of the Railroad Commission of the state of California is carried out, and secondly, what extensions and joint trackage arrangements will have to be provided in order to comply with the terms of that order. Jurisdiction over these matters is expressly vested in the Interstate Commerce Commission under the Transportation Act, 1920, and for that reason alone the decision of the Supreme Court of the state of California is clearly right. These facts and conclusions may be amplified.

Abandonment of Existing Facilities.

Let us refer to the map attached to the petitoin. All trains of the Southern Pacific, upon its line to San Pedro and the Harbor District, and all of its trains to and from Santa Ana and its several branches in Orange county, now move along Alameda street. All passenger trains to and from San Francisco and other points to the north, and all passenger trains upon its main line to El Paso, move along Alameda street northerly of Fourth street. These "operations"

along Alameda street, a distance of approximately three miles, according to the terms of the order must be discontinued and abandoned, only local switching being permitted.

The passenger station of the Southern Pacific is located at the intersection of Fifth street and Central avenue. This is a modern structure, completed in 1915. While the order does not expressly provide for its abandonment its effect is precisely that, for if passenger trains cannot be run into and out of such a station it thereupon ceases to be a passenger station.

The Santa Fe and Salt Lake passenger stations are located respectively westerly and easterly of the Los Angeles River, near its intersection with First street. While it is conceivably possible that these two stations might still be used as such after completion of a union depot in the Plaza district, as contemplated by the Railroad Commission, the fact nevertheless remains that in practical effect the enforcement of the order will render these properties useless and will result in their abandonment.

Extensions and Joint Trackage Arrangements Necessary Under the Railroad Commission's Order.

Since all train movements except local switching are ordered discontinued along Alameda street, the Southern Pacific would have to seek a new route through the city, north to south.

What routes are open to it?

It might make use of the tracks of the Santa Fe along the westerly bank of the river—the Santa Fe's principal terminal facilities in the city—by the construction of connecting tracks between the two lines in the southerly portion of the city, and the construction of other connecting tracks in the north central portion of the city.

Or it might make use of the tracks of the Salt Lake along the easterly bank of the river —the latter's principal terminal facilities in the city—by the construction of similar connecting tracks. This would, however, occasion crossing and again recrossing the river.

Or it might build a new line of its own through the city, but this is entirely impracticable due to the enormous expense of constructing a line of such length through the heart of the industrial section of a large city.

The Salt Lake would have to build an extension or new line across the river to reach the area defined by the commission as the site for a union station.

The Southern Pacific main line to and from the east borders this site on the north as does the Santa Fe on the east, and it is conceivably possible to bring trains upon those lines into a depot located within the area mentioned, without serious operating difficulties. However, it

would be extremely difficult to handle Southern Pacific trains from and to the north, into and out of such a station without some switching back and forth, which is of course contrary to good operating methods. This objection might be obviated by the construction of other extensions of line, but this only emphasizes the fact that the order of the Railroad Commission does contemplate, actually and in practical effect, extensions of very considerable magnitude, together with joint use of certain main line tracks and terminal facilities now separately owned and operated.

The petitioner seeks to avoid the issue raised by this situation, by saying that the abandonment of facilities and the construction of extensions and the joint use of facilities are not contemplated by the express terms of the order as made, but the fact remains that such is the necessary effect of the order. The Railroad Commission has no power to do indirectly what it cannot do directly.

We shall not discuss in this brief constitutional questions respecting an order of any commission directing a public utility to expend large sums in acquiring new property and devoting it to a public use.

Corrections in Petitioner's Statement of Facts.

On pages 15 and 16 of petitioner's brief it is stated:

"The three railroads involved approach the city from the north and come together at a point marked 'North Broadway Viaduct' near the top of the map. All three roads pass under this viaduct."

While literally true, the statement gives a somewhat false conception of the true situation. The Southern Pacific trains to the north pass this point, as do those of the Santa Fe via Pasadena. The Salt Lake has but a branch to Pasadena and that is the line referred to. All of the Santa Fe trains on its main line to the east through Fullerton, and to San Diego, move through the southerly portion of the city, as do those of the Southern Pacific on its Santa Ana and San Pedro branches. All of the main line trains of the Salt Lake and its San Pedro branch line trains enter and leave through the southerly portion of the city. The main line of the Southern Pacific to the east does not pass near the North Broadway viaduct.

On page 17 of petitioner's brief it is stated that the Salt Lake line borders the area prescribed by the Railroad Commission. This is not the fact, for it will require the construction of an extension of the Salt Lake line crossing the river, to reach the area mentioned.

The Transportation Act of 1920 Vests in the Interstate Commerce Commission Sole Power and Authority to Order or Permit Joint Use of Railroad Facilities. That Field Is Thereby Completely Occupied, to the Exclusion of any Right of State Commissions to Act in the Premises.

In the decision of the Supreme Court of California, of which petitioner seeks a review, is a clear exposition of the new policy of the federal law with reference to the railroads. And in the recent cases of Akron, Canton & Youngstown Railway Company *et al.*, v. The United States *et al.*, (The New England Divisions' case), decided by this court on February 19th, last, and in Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Company, 257 U. S. 563, this court has in no uncertain language recognized and given effect to the greatly broadened powers of the Interstate Commerce Commission, under the Transportation Act, 1920.

The Supreme Court of the state of California has recognized in the instant case that the order of the Railroad Commission, requiring as it did the construction and extension of lines of railroad, the abandonment of operations upon a very important section of main line of one of the railroads, and the joint use of terminal fa-

cilities and the construction of certain extensions, infringed upon these newly granted powers of the Interstate Commerce Commission.

As to joint use of terminal facilities: Petitioner's brief says, page 26, that the order does not require any joint use of facilities; but this seems to be intended to apply to present or existing facilities and to admit that there is to be and must be a joint use of the new station and the facilities appurtenant thereto.

It is clear that under the provisions of paragraphs 3 and 4 of section 3 of the Interstate Commerce Act the power to order such joint use of a terminal is now vested in the Interstate Commerce Commission. In answer to this, the petitioner cites the case of Missouri etc. v. Larrabee etc., 211 U. S. 612, 53 L. Ed. 352, in support of the proposition that although the act may have vested such power in the Interstate Commerce Commission, yet until that commission asserts and exercises the power the state's authority abides the same as if Congress had not acted at all. In other words, petitioner contends that Congress having been delegated the power to regulate interstate commerce, may itself delegate to the commission the right to say whether or not that power shall be exercised, and this is plainly contrary to the common maxim *delegatus non potest delegare*.

But we shall certainly not attempt here to question any ruling made by this court. Our view of the Larrabee case and of its inapplicability here is best illustrated by four cases recently decided in the state courts.

The first of these, to which we invite the court's most careful attention, is the very recent decision of People v. Public Service Com. (Court of Appeal, New York), 233 N. Y. 113, 135 N. E. 195. It is stated in that opinion that in September, 1920, the Public Service Commission made an order requiring the N. Y. Central and the Lehigh to make such track connections between their lines in and near Batavia, N. Y., and lay such other tracks and facilities as "may be necessary to establish and furnish adequate and convenient interchange of freight; that the connection be made by repairing and completing the track now connected with the tracks of the Lehigh and extending to a point near the track of the N. Y. C., which track was formerly connected with the tracks of the N. Y. C."

In the second division of the opinion the court quotes the second paragraph of section 3 of the Interstate Commerce Act as amended by the Transportation Act of 1920, section 405, and says:

> "To sustain the order of the Public Service Commission in the instant case would necessarily establish that the two several

> commissions mentioned were clothed with jurisdiction to grant the relief sought and require us to ignore the well-established principle of law that the Congress, having delegated to the Interstate Commerce Commission power to deal with the subject matter of this proceeding, an exercise of like power by the state is thereby superseded." (Citing cases.)

Another case to which we may refer is, The People of the State of New York, *ex rel.*, the New York Central Railroad Company, v. Public Service Commission of the State of New York, 198 Appellate Division 436, 191 New York Supplement 636, which was affirmed in a memorandum opinion of the New York Court of Appeals, reported in 134 Northeastern 590, that court simply saying that the subject matter of the controversy had, by the Transportation Act of 1920, been relegated to the Interstate Commerce Commission. Thereafter, application was made to this court for a writ of certiorari, and that was denied without an opinion (257 U. S.——, 42 Sup. Ct. 314, 66 Law Edition——).

In Louisville and Nashville v. The State, 16 Ala. App. 199, 76 So. Rep. 505, the Supreme Court of that state reviewed the opinion by the Court of Appeals. That case involved what is known as the Railroad Headlight Law of Ala-

bama, which required a headlight of a certain candlepower to be used on every locomotive.

The Supreme Court of Alabama, page 514 of the Reporter, said:

> "When the mandatory act of Congress approved March 4, 1915, is read in connection with the Safe Locomotive Boilers Act of February 17, 1911, we cannot escape the conclusion that the intention of Congress is plain that the states must be excluded from the right to legislate within the field to which the several original acts and the mandatory act extended the federal authority. It is immaterial that the final rules on the subject of headlights to be used on such locomotives were not promulgated by the Interstate Commerce Commission until, respectively, June 6 and December 26, 1916, after the commission of the alleged offense for which the prosecution was had.
>
> "We are of the opinion that the act of the Alabama Legislature of July 17, 1915, is contrary to the express purpose and scope of the mandatory act of Congress of March 4, 1915, and that as to engines engaged in interstate commerce it has no application."

Another case closely analogous to the case at bar is that of State v. Atlantic C. L. R. R. Co., ... Fla. ..., 87 So. Rep. 773, decided February 15, 1921. This case involved a section of the Transportation Act of 1920, the same act which we are here invoking, but a section of the act which is not here involved, namely, the section

amending section 6, subdivision 13-A of the Interstate Commerce Act.

The court says:

> "Until Congress acted, there could be no question of the power of the state over the matter in controversy. But when Congress exercised the power and lodged jurisdiction over it in the Interstate Commerce Commission, it took it out of the jurisdiction of the state, and the right of the state over the same subject matter was extinguished."

The court further says at page 778:

> "In the case of Missouri P. R. Co. v. Larrabee etc., the court recognized and sanctioned this doctrine, but found that there had been no action by Congress or the Interstate Commerce Commission and that therefore a state court may by mandamus compel a railroad company doing interstate business to afford equal local shipping service to its shippers, notwithstanding the cars in regard to which the service is claimed are eventually to be engaged in interstate commerce. From this it seems that if Congress had expressly lodged in the Interstate Commerce Commission the power and duty with regard to switching service, as it has with regard to requiring physical connection between rail and water transportation, the court would have held that the state was without authority to regulate the subject."

It cannot be that a state commission may order joint use of terminals—terminals used in

interstate commerce—and thus forestall and prevent the exercise of this power vested in the Interstate Commerce Commission.

The Language Used in the Transportation Act of 1920 Is Clear. No Reference May Be Had to Views of Individual Members of Congress nor to Committee Reports Where the Effect Would Be Only to Create Doubts, Which Do Not Now Exist.

In attempting to construe the Transportation Act as not conferring upon the Interstate Commerce Commission jurisdiction with respect to joint terminals, the petitioners brief at page 30 descends to a quotation from the Congressional Record, giving excerpts from the debate on the bill in the House of Representatives. Upon this point this court has expressed itself repeatedly to the effect that in construing an Act of Congress a court is not at liberty to recur to the views of individual members in debate.

Aldridge v. Williams, 3 How. 9;
U. S. v. U. P. R. Co., 91 U. S. 72;
District v. Washington, 108 U. S. 243;
Dunlap v. U. S., 173 U. S. 65;
Maxwell v. Dow, 176 U. S. 581,

and numerous other cases.

In Railroad Commission v. C. B. & Q. Railroad Company, 257 U. S. 563, this court in construing this very Transportation Act of 1920, said at page 243:

> "Great stress is put on the legislative history of the Transportation Act to show that the bill was not intended to confer on the commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute which in its language is doubtful or obscure. (Citing cases.) But when taking the act as a whole the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. (Citing cases.) Such aids are only admissible to solve doubt and not to create it."

Conclusion.

It is therefore submitted that the petition should be denied. That this conclusion is correct is recognized by the city of Los Angeles, one of the parties to this proceeding before the Railroad Commission and in the Supreme Court of the state of California, since it has already filed its petition with the Interstate Commerce Commission seeking an order such as it origin-

ally desired from the Railroad Commission of the state of California.

Respectfully submitted,

C. W. DURBROW,
E. W. CAMP,
A. S. HALSTED,
CHAS. H. BATES,
Attorneys for Respondent.

W. F. HERRIN,
Of Counsel.

APR 11 1923
WM. R. STANSBURY
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1922

No. 286

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a corporation),
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA, BRIEF IN SUPPORT THEREOF and NOTICE OF DATE FOR SUBMISSION THEREOF.

HUGH GORDON,
WILLIAM W. CLARY,
Flood Building, San Francisco,
Attorneys for Petitioner.

Subject Index

	Page
Petition for Writ of Certiorari to the Supreme Court of the State of California	1
Opening statement	1
Summary of matter involved	3
Findings of the commission	6
Commission's order	6
Grounds of State Supreme Court's decision	7
The issue	8
Reasons relied on for the allowance of the writ	9
Appendix	11
Map (insert)	after page 14
Brief in Support of Petition for Writ of Certiorari	15
I. Statement of facts	15
II. Specification of errors relied upon	18
III. Argument	19
1. The amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots	19
2. If the amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the State Commission's order is valid unless the Interstate Commerce Commission makes an inconsistent order	32
Notice of date for submission	38
Admission of service	39

Table of Cases Cited

	Pages
Application of the Pearl Valley Railroad Company, 67 I. C. C. Rep. 748	22
Atlantic Coast Line Ry. v. State of Georgia, 234 U. S. 280; 50 L. Ed. 1312	35
California Public Utilities Act (Stat. 1915, ch. 91), Sec. 2	12
California Public Utilities Act (Stat. 1915, ch. 91), Sec. 36	9, 13
Cleveland etc. v. Illinois, 177 U. S. 514; 44 L. Ed. 868	35
Congressional Record, Nov. 15, 1919	30, 31
Constitution of California, Art. XII, Sec. 22	11
Constitution of California, Art. XII, Sec. 23	11
Cooley v. Portwardens, 12 How. 316	35
In the Matter of the Application of the Philadelphia, Newtown & New York Railroad for a certificate of public convenience and necessity, 67 I. C. C. Rep. 252	22
Interstate Commerce Act (as amended), Sec. 1	7, 19, 20, 23, 27
Interstate Commerce Act (as amended), Sec. 3	7, 19, 24
Interstate Commerce Act (as amended), Sec. 5	7, 19, 20
Interstate Commerce Act (as amended), Sec. 15a	7, 19, 20
Interstate Commerce Act (as amended), Sec. 17	32
Interstate Commerce Act (as amended), Secs. 18-22 inc.	7
Missouri Pacific Railway Company v. Larrabee Flour Mill Company, 211 U. S. 612	19, 33, 36
Motor Transit Company v. Railroad Commission, 64 Cal. Dec. 278; 209 Pac. 586	29
Northern Pacific R. R. Co. v. Washington, 222 U. S. 370; 56 L. Ed. 237	35, 36
Oro Electric Company v. Railroad Commission, 169 Cal. 466; 147 Pac. 118	29
People ex rel. New York Central Company v. Public Service Commission, 233 N. Y. 113	37
Sturges v. Crowninshield, 4 Wheat. 193	35

Page

Texas v. Eastern Texas Railroad Co., U. S. Adv. Op. 1921-22, 313 22

Turner Creamery Co. v. Chicago, Milwaukee & St. Paul R. R., 154 N. W. 819; P. U. R. 1916A, 1083..... 29

United States v. Delaware and Hudson Co., 213 U. S. 366 32

U. S. Printing Co. v. Deering, U. S. Adv. Op. 1920-21, pp. 176, 182..... 32

Willson v. Black Bird Creek Marsh, 2 Pet. 251; 7 L. Ed. 414 35

NOTE.

In order to present the matter covered by the following petition it has been necessary to file three petitions for writs of certiorari. The titles of these three petitions are:

(1) *Railroad Commission of the State of California, Petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), Respondent.*

(2) *Railroad Commission of the State of California, Petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), Respondent.*

(3) *Railroad Commission of the State of California, Petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), Respondent.*

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. One original of this transcript has been filed in each case and fifty copies have been filed in the case of Railroad Commission v. Southern Pacific Company, etc.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1922

No.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a corporation),

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Your petitioner, the Railroad Commission of California, is a commission created and established by the Constitution of that state and vested by said Constitution and by statutes with the power to regulate and control railroads and other public utilities

doing business therein. Said commission was a party to a proceeding before the Supreme Court of California entitled *Los Angeles & Salt Lake Railroad Company, a Corporation vs. Railroad Commission of the State of California, et al., etc.* A decision in this proceeding was rendered December 19, 1922, became final January 18, 1923, and is reported in 64 California Decisions 557.

In this case certain state statutes and the authority of the Railroad Commission under these statutes to make regulations relative to depot facilities of railroads were drawn in question on the ground of their being repugnant to the Act of Congress of 1920, amendatory to the Interstate Commerce Act, and the decision of the California Supreme Court was against their validity.

The decision of the State Supreme Court holds that certain powers formerly vested by state laws in the Railroad Commission have been terminated by said Act of Congress and vested in the Interstate Commerce Commission. In our opinion the construction given said Act of Congress by said decision is erroneous. We also believe that the question here at issue is of more than local importance in that it involves the duties and powers of the Interstate Commerce Commission and the powers of every state to regulate and control service and facilities of railroads.

SUMMARY OF MATTER INVOLVED.

Los Angeles is a city having a population of about 600,000 inhabitants. It is served by three steam railroads doing both intrastate and interstate business, i. e., the "Southern Pacific", the "Atchison, Topeka & Santa Fe" and the "Los Angeles and Salt Lake". Each of these companies has a separate line of railroad running into said city crossing numerous public streets at grade and each has a separate passenger depot. There is attached to this Petition a map showing the location of the railroad lines of the three railroad companies involved in these cases.

In 1916 seven complaints against the three last named companies were filed with the Railroad Commission. Three of these complaints were filed by different so-called Civic and Improvement Associations in Los Angeles and four by adjacent municipalities whose citizens travel back and forth to and from Los Angeles. A copy of one of these complaints will be found in the transcript, page 7. It is sufficient here to state that all these complaints alleged that there are a large number of dangerous grade crossings of each of the three steam railroad lines over public streets and street and interurban electric railways and two of the complaints alleged that the existing passenger depot of each of the three railroad companies is inadequate and inconveniently situated. The relief asked by the various complaints included a general investigation of the whole railroad and terminal situation, the

separation or abolition of dangerous grade crossings, and the construction and use jointly by the three railroad companies of a union passenger depot.

Later the Southern Pacific and Salt Lake companies filed a joint application with the commission asking permission to rearrange their tracks so as to abolish some of the important grade crossings and to use jointly the present Southern Pacific station as a common passenger depot. The Santa Fe Company was not included in this proposed arrangement.

The seven complaints and the application were consolidated for hearing before the Railroad Commission and one final order was made as to all. The engineering investigation and hearings in the consolidated matter, including a rehearing had before the commission, extended over a period of more than four years.

In the evidence submitted by various engineers were four plans for a union depot at the area specified, all of which contemplated a joint use by all of the defendants of certain existing terminal facilities owned by each of them to such extent as would enable the carriers to use the proposed union station in the most convenient manner. There was also an inspection of the premises by the commission.

The final order of the commission made no finding to the effect that a joint use of existing facilities was required and no such joint use was ordered.

The commission in its final order stated:

> "It was urged by the carriers that the order requiring a union passenger depot at the plaza is without support in the evidence and that the Commission disregarded the evidence of carriers and relied exclusively upon the report of the Commission's own engineer. The Commission has given this claim careful consideration. Five detailed plans for a union terminal were introduced in evidence by five different witnesses. They were the Hawgood plan, the Barnard plan, the Storrow plan, the Southern Pacific-Salt Lake plan and the Sachse plan. With the exception of the Southern Pacific-Salt Lake plan, all of these plans called for a union passenger depot at the plaza, but differed as to the exact location of the depot and the arrangement of tracks, approaches, etc. In addition to these, the so-called Arnold report was introduced and there was much other evidence, all supporting the general proposition that a union depot at the plaza was necessary. The Commission did not rely solely on the report of its own engineer, nor did it adopt the Sachse plan in all its particulars, but, in accordance with the overwhelming preponderance of the evidence, the Commission did order a union depot at the general site of the plaza, and left the exact location of the depot, tracks, approaches, etc., to be determined by the carriers themselves, subject only to the final approval of the Commission."

The final order of the commission was made December 6, 1921. (Tr. pp. 131-152 inc.)

FINDINGS OF THE COMMISSION.

This order was based upon certain findings of fact which may be condensed and summarized as follows:

Certain grade crossings of the Southern Pacific, Santa Fe, and Salt Lake railroads are unsafe and public safety, convenience and necessity require their elimination.

The passenger stations of said railroad companies are inadequate to meet the public needs both in the matter of depot facilities and in connection with the elimination of grade crossings.

In order to eliminate the certain grade crossings enumerated *and* secure to the public the adequate and convenient union passenger terminal facilities which it requires, it is necessary that a union station be erected within an area specified.

COMMISSION'S ORDER.

The order itself was specific and required certain definite things to be done. Briefly these were:

The procurement jointly by the three carriers of grounds for a union depot within the area specified.

The filing of plans and specifications jointly by the three carriers for the construction of an adequate union passenger depot. (Provisions were made in the order as to apportionment of cost and time of construction.)

The actual construction of the depot in accordance with approved plans.

The elimination of 17 specified grade crossings on the Southern Pacific line by the cessation of train operations longitudinally at grade along and upon a certain street. (Alameda Street.)

The elimination of 6 specified grade crossings on the Santa Fe and Salt Lake lines by the construction of viaducts.

Each of the three carriers obtained from the Supreme Court of California a writ of review directed to the Railroad Commission to review the proceedings and order above described. The three proceedings raised almost identical questions and were treated by the State Supreme Court as one case. However, they were separate cases and for that reason it has been necessary to petition for three writs of *certiorari* here. The petitions are identical and the same transcript of record is used in all these cases.

GROUNDS OF STATE SUPREME COURT'S DECISION.

The Supreme Court of California ruled that the Railroad Commission might exercise jurisdiction over the matter of eliminating grade crossings, but that full power and authority over the matter of union terminal depot facilities has been vested in the Interstate Commerce Commission by the Act of 1920, amendatory to the Interstate Commerce Act.

The decision of the state Court consisted largely of a résumé of Sections 15a, Section 5, Section 1, subdivisions 18 to 22, inclusive, and Section 3 of the

Interstate Commerce Act as amended. The conclusion of the Court from this summary is completely expressed in the last paragraph of the decision which we quote:

> "(1) From the foregoing excerpts from the Act of Congress of 1920, amendatory of the Interstate Commerce law and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads who are largely engaged in interstate commerce, and who are the petitioners herein has been vested in the Interstate Commerce Commission under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein. This disposition of the primary inquiry involved in these proceedings renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein."

The Supreme Court of California is the Court of last resort in this state and there is no appeal from its decision except to this Court.

THE ISSUE.

The issue thus presented is one of jurisdiction.

Public necessity requires that a depot be built in Los Angeles. Who has jurisdiction to order the

railroads to furnish this facility, the state or the National government?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The authority of the Railroad Commission under state law to make regulations relative to union depots was drawn in question on the ground of its being repugnant to the Interstate Commerce Act, and the decision of the state Court was against its validity.

This decision was erroneous for the following reasons:

The California commission has authority under state law (Stat. 1915, Chap. 91, Sec. 36) to order the three carriers to erect a union depot. Prior to the enactment of the Transportation Act the carriers themselves admitted this to be so.

The Amendments of 1920 to the Interstate Commerce Act vest no jurisdiction in the Interstate Commission relative to the construction and use of new union depots.

The proviso at the end of paragraph 17, of Section 1 of the interstate act specifically reserves to the states the right to exercise its police powers "to require just and reasonable passenger service for intrastate business" except in so far as any state requirement may conflict with a lawful order of the Interstate Commission. (This proviso was not adverted to in the decision of the state Court.)

The Interstate Commission has made no order of any kind touching the matters here involved.

Wherefore your petitioner respectfully prays that a writ of *certiorari* may issue out of and under the seal of this Honorable Court directed to the Supreme Court of the State of California, commanding said Court to certify and send to this Honorable Court for its review and determination on a day certain to be therein designated, a full and complete transcript of the record in the proceeding in said Supreme Court of the State of California, entitled: *Los Angeles & Salt Lake Railroad Company, a Corporation, Petitioner, vs. Railroad Commission of the State of California, et al., Respondents*, L. A. No. 7165, pursuant to the Act of September 6, 1916, and that said judgment of said Supreme Court of the State of California may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

Dated, San Francisco,
March 21, 1923.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

HUGH GORDON,
WILLIAM W. CLARY,
Its Attorneys, San Francisco, California.

Appendix.

Extracts from Constitution of California:

Art. XII, Sec. 22. There is hereby created a Railroad Commission which shall consist of five members and which shall be known as the Railroad Commission of the State of California.

Art. XII, Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the legislature, and every class of private corporations, individuals, or association of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the Railroad Commission respecting pub-

lic utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution.

Extracts from Public Utilities Act, Statutes 1915, p. 115:

Sec. 2. (*i*) The term "railroad," when used in this act, includes every commercial, interurban and other railway other than a street railroad, and each and every branch or extension thereof, by whatsoever power operated, together with all tracks, bridges, trestles, rights of way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment, and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

(*j*) The term "railroad corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever, owning, controlling, operating or managing any railroad for compensation within this state.

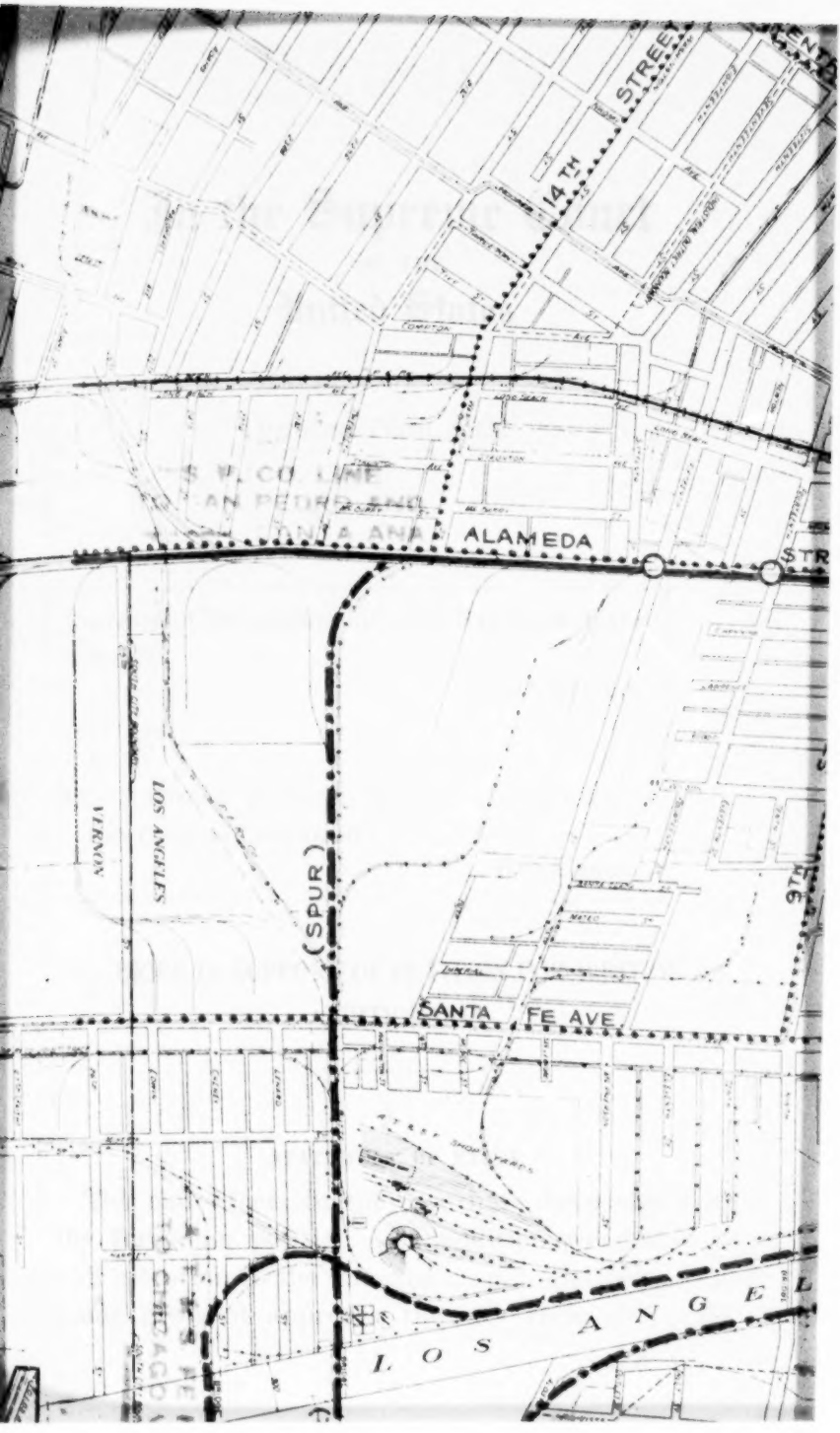
(*l*) The term "common carrier," when used in this act, includes every railroad corporation; street railroad corporation; express corporation; dispatch, sleeping car, dining car, drawing room car, freight, freight-line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessees, trustees, receivers or trustees appointed by any Court whatsoever, operating for compensation within this state.

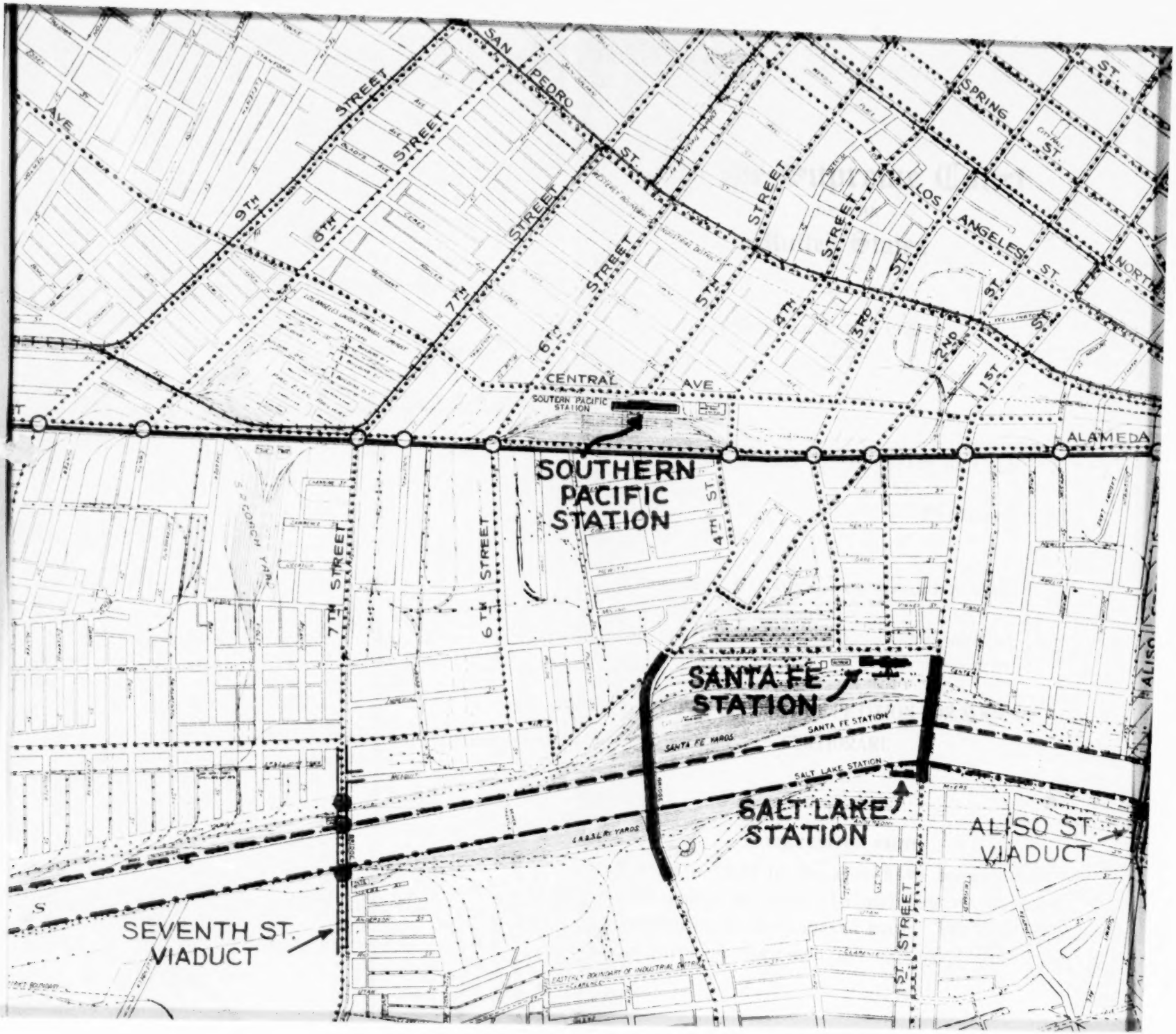
(*dd*) The term "public utility," when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph cor-

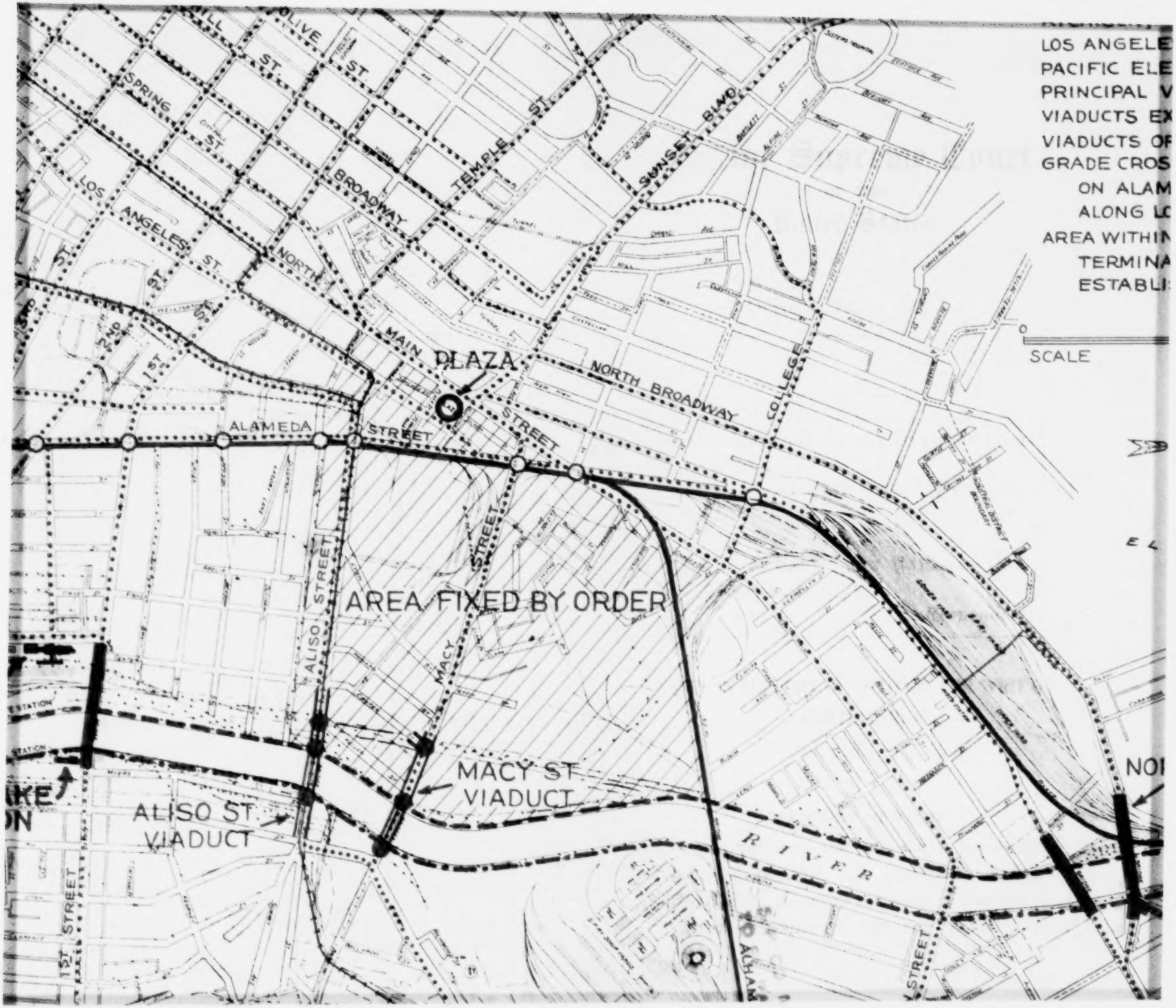
poration, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof.

SEC. 36. Whatever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or ap-

portionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.


14TH
STREET
ALAMEDA
SANTA ANA
(SPUR)
SANTA FE AVE
LOS ANGELES
9TH
L O S A N G E L


SAN PEDRO STREET
SPRING ST.
LOS ANGELES ST.
9TH STREET
8TH STREET
7TH STREET
6TH STREET
5TH STREET
4TH STREET
3RD ST.
2ND ST.
1ST ST.
CENTRAL AVE
SOUTHERN PACIFIC STATION
ALAMEDA
SOUTHERN PACIFIC STATION
7TH STREET
6TH STREET
4TH ST.
SANTA FE STATION
SANTA FE YARDS
SANTA FE STATION
SALT LAKE STATION
SALT LAKE YARDS
SALT LAKE STATION
ALISO ST. VIADUCT
SEVENTH ST. VIADUCT
1ST STREET


LOS ANGELE
PACIFIC ELE
PRINCIPAL V
VIADUCTS EX
VIADUCTS OF
GRADE CROS
ON ALAM
ALONG LO
AREA WITHIN
TERMINA
ESTABLI
SCALE
MAIN
PLAZA
NORTH BROADWAY
COLLEGE
ALAMEDA
STREET
AREA FIXED BY ORDER
ALISO STREET
MACY STREET
MACY ST
VIADUCT
ALISO ST
VIADUCT
RIVER
1ST STREET
SPRING ST.
BROADWAY
TEMPLE ST.
SUNSET BLVD
LOS ANGELES ST.
NORTH

ATCHISON, TOPEKA & SANTA FE RY. - MAIN LINE
LOS ANGELES & SALT LAKE R.R. - MAIN LINE
PACIFIC ELECTRIC RAILWAY - INTERURBAN
PRINCIPAL VEHICLE STREETS
VIADUCTS EXISTING
VIADUCTS ORDERED
GRADE CROSSINGS ORDERED TO BE ELIMINATED
ON ALAMEDA STREET
ALONG LOS ANGELES RIVER
AREA WITHIN WHICH UNION PASSENGER TERMINAL IS ORDERED TO BE ESTABLISHED
0
1/4
1/2
3/4
1
SCALE
MILES
SUNSET BLVD.
NORTH BROADWAY
COLLEGE
ELYSIAN PARK
NORTH BROADWAY VIADUCT
SO'U. PAC. CO. MAIN LINE TO SAN FRANCISCO
RIVER
OFFICIAL BED OF RIVER
PIGEON FARM
ARROYO
SAN FERNANDO
ALAMEDA STREET

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1922

No.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a corporation),

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

STATEMENT OF FACTS.

The main facts in the case have been stated in the foregoing petition. In addition we desire to call attention to the annexed map. The three railroads involved approach the city from the north

and come together at a point marked "North Broadway Viaduct" near the top of the map. All three roads pass under this viaduct. From this point the "Salt Lake" and "Santa Fe" lines follow the bed of the Los Angeles River crossing important public highways at grade at Macy Street, Aliso Street and Seventh Street. The order of the commission requires these grade crossings to be eliminated by the construction of viaducts at the points marked on the map "Macy St. Viaduct", "Aliso St. Viaduct" and "Seventh St. Viaduct."

The Southern Pacific line from San Francisco does not follow the river bed but turns after passing under the North Broadway Viaduct and runs in a southwesterly direction till it reaches the north end of Alameda Street. From that point it runs directly south through the city on Alameda Street at grade all the way. The Southern Pacific line from El Paso comes into the city from the east on the avenue marked Alhambra Avenue. It joins the other line just north of "plaza". Alameda Street is a main highway or thorofare through the city and one of the most heavily traveled streets in the city. All the main line traffic of the Southern Pacific lines both from east and north run through Los Angeles at grade longitudinally upon and along this street the rails being flush with the pavement most of the way. Alameda Street is also crossed by 17 other public streets at grade. Some of these are very heavily traveled streets and several of

them carry street and electric interurban cars which cross the Southern Pacific tracks at grade. These crossings are marked by hollow red circles on the map. The commission ordered the Southern Pacific Company to eliminate these grade crossings by removing all traffic from Alameda Street except limited switching movements at night.

The district marked on the map with red diagonal lines and designated "area fixed by the order" is the district within which the carriers were ordered to construct a union depot. It is referred to in the record frequently as the "plaza site" the plaza being a small park in one corner of this area.

It will be seen that the Salt Lake and Santa Fe lines border this designated area and there would be no difficulty in constructing approaches to a union depot from the main lines of these roads. It will also be seen that the San Francisco and El Paso lines of the Southern Pacific pass directly thru this area so that a depot in this area would be easily approached by these lines. The Southern Pacific traffic from the south comes into the city at a point marked "To San Pedro and Santa Ana." But a small proportion of the total Southern Pacific traffic comes in from this direction. It is obvious from an inspection of the map that this southerly traffic can reach the proposed depot site in at least three different ways; by a new line which the Southern Pacific might construct along the river bed reaching the depot in the same way that the southerly lines of the Salt Lake and Santa Fe

reach it; by some arrangement with either the Salt Lake or Santa Fe for a joint use of tracks for southerly traffic; by an amendment to the commission's order permitting the southerly traffic to come into the depot upon the present tracks along Alameda Street.

The order of the commission did not designate any specific plan but required the carriers to prepare their own plans. This has not yet been done.

II.

SPECIFICATION OF ERRORS RELIED UPON.

The errors upon which petitioner relies for the issuance of the writ and for reversal of the judgment were outlined in the foregoing petition. For convenience we will briefly restate them.

The California commission has authority under state law (Section 36, Public Utilities Act, see appendix) to order the three railroad companies to erect a union depot.

The state Court erroneously construed the federal statute amendatory of the Interstate Commerce Act as having deprived the state of this jurisdiction and vested it in the Interstate Commerce Commission.

The state Court failed to give effect to the proviso of Section 1, paragraph 17 of the amended Interstate Commerce Act and to the principle an-

nounced in the case of *Missouri Pacific Railway Company v. Larrabee Flour Mill Company,* 211 U. S. 612.

The subject will be discussed under two heads:

1. The amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots.

2. If the amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the state commission's order is valid unless the interstate commission makes an inconsistent order.

III.

ARGUMENT.

1. The Amendments of 1920 to the Interstate Commerce Act vest no power in the Interstate Commerce Commission relative to union passenger depots.

The state Court based its decision that the interstate commission has exclusive jurisdiction over union depot facilities mainly upon Section 15a; Section 5, paragraphs 4 and 5; Section 1, paragraphs 3, 10, 1, 18, 21, 22; Section 3, paragraphs 3 and 4 and Section 1, paragraph 20, of the Amended Interstate Commerce Act. A brief reference to these provisions in the order discussed by the state Court is essential.

Section 15a. This section is referred to only as showing generally the greatly enlarged powers of the interstate commission and its affirmative duty to maintain an adequate railway service for the people of the United States.

Section 5. (Pars. 4 and 5.) These paragraphs relate to the general plan for the consolidation of railway properties of the United States into a limited number of systems. They are quoted in the decision as being expressive of the enlarged scope and purposes of the Act.

Section 1. (Pars. 3 and 10.) These provisions are referred to to show the definitions of the terms "railroad" and "car service."

None of the sections thus far mentioned make any reference to depots or terminal facilities.

Section 1. (Par. 1.) This section refers only to cases where the commission is of the opinion that an emergency exists. It gives the interstate commission powers when an emergency exists to (a) suspend established rules, (b) to make directions relative to car service, (c) to require joint use of terminals, including main line tracks for a reasonable distance outside of such terminals. This language does not authorize the interstate commission to require the erection of a new union depot for permanent use but refers to the joint use during emergencies of existing terminals. In the present case an emergency did not exist and the state

commission did not order the joint use of any existing terminal or any main line tracks.

Section 1. (Par. 18.) This provision refers to the construction, extension and abandonment of railroad lines and provides for the issuance of certificates of public convenience and necessity therefor. It was fully considered by this Court in *Texas v. Eastern Texas Ry. Co.*, U. S. Adv. Ops. 1921-22, p. 313. In the argument before the state Court and in the Court's decision, considerable importance was attached to this paragraph because the order of the state commission requires in connection with the elimination of grade crossings, the abandonment of certain traffic on Alameda Street within the City of Los Angeles. It was said that subdivision 18 of Section 1 deprived the state of the power to require the abandonment of any part of a line of railroad.

Reference to the actual order (Transcript, pp. 142-151 inc.) will show that the commission ordered neither the construction or abandonment of a "line of railroad." True, the erection of a new union depot and the elimination of grade crossings will require a rearrangement of traffic. Some new track may have to be laid and some old track abandoned. Reference to the map annexed to the petition will show that the amount of new track necessary to construct to enable the three roads to reach the area specified for the depot is very small. When it is all done there will be no change in the service

rendered to the public except that it will be improved.

The Interstate Commerce Commission has held that relocations of trackage of the kind here in question, where the changes have no effect on the service to the public, do not constitute either the construction or abandonment of "lines of railroad" within the meaning of par. 18, Sec. 1 of the Interstate Commerce Act.

In the matter of the Application of the Philadelphia, Newtown & New York Railroad for a certificate of public convenience and necessity, 67 I. C. C. Rep. 252, decided March 11, 1921.

Application of the Pearl Valley Railroad Company, 67 I. C. C. Rep. 748, decided June 14, 1921.

In the latter case 2.62 miles of main line track were abandoned but inasmuch as the service to the public was not affected no certificate was deemed necessary.

This construction is further borne out by the case of *Texas v. Eastern Texas Railroad Co.* (U. S. Adv. Op. 1921-22, 313). This Court in that case had before it paragraph 18, Section 1, of the Interstate Commerce Act. The question was, to what extent the interstate commission had jurisdiction under the amendments of 1920 over the abandonment of a railroad doing both interstate and intrastate commerce.

Referring to paragraph 18 and subsequent provisions, the Court said:

> "By them Congress has undertaken to regulate the construction and acquisition of new or additional lines of railroad and the extension and abandonment of old lines."

The "line of railroad" which the Court was discussing was a line 30 miles long. Its abandonment meant that a large territory and many people would cease to have any railroad service (by the road in question) at all.

The Supreme Court referred to the application as "an application for a certificate authorizing it to abandon and cease operating its road." This implies a complete cessation of service. Here, the carriers will not abandon or cease operating their roads or any part of them. They will merely shift their lines in such a way as to carry on the same operations they do now, but with more safety and convenience to the public.

Section 1. (Pars. 21 and 22.) Paragraph 21 authorizes the interstate commission to require any carrier to provide adequate facilities for performing "its car service as that term is defined in the Act" and to extend its line or lines. The term "car service" is defined in paragraph 10 of Section 1 and has to do with the supply, distribution and exchange of cars and locomotives. The clause as to extension of lines is similar to that found in paragraph 18 of Section 1, except that paragraph 18 applies to cases where permission to extend is

sought by the carrier and paragraph 21 applies to cases where the carrier is ordered to extend by the commission upon its own initiative or upon complaint. In neither case is a mere rearrangement of existing trackage an extension of a "line of railroad" within the meaning of these provisions. Paragraph 22 exempts from the authority of the commission, conferred by paragraphs 18 to 21 inclusive, all construction or abandonment of spurs, industrial tracks, etc., located wholly within one state.

Section 3. (Paragraphs 3 and 4.) Paragraph 3 refers to the interchange of traffic between different carriers. It was not claimed in any of the briefs before the state Court that the order of the state commission requires any interchange of traffic and in our opinion this paragraph has no bearing on the issue before the Court.

Paragraph 4 refers to existing terminal facilities. The paragraph reads as follows:

> "If the commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree on such terms as the commission may fix as just and reasonable for the use so required, to be

ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

A comparison of this paragraph with Section 36 of the California Public Utilities Act will show that there is no conflict or inconsistency between them. Paragraph 4 refers to a "carrier owning or entitled to the enjoyment of terminal facilities." It provides for the use of the "terminal facilities including main line track for a reasonable distance outside such terminal" of one carrier by another carrier. It provides that "the carrier whose terminal facilities are required to be so used" may recover compensation. These expressions plainly mean existing terminal facilities. The order of the state commission requires the erection of a new union terminal at a new site, considerably removed from any of the existing depots. Obviously there

can be no joint use of the existing terminals of one carrier by another under this order. Instead, the matter falls within the terms of Section 36 of the California Act. In this statute there is specific provision for the erection of "a new structure or structures"; for "fixing the site thereof" and for "joint action" in erecting any "new structure."

It may be claimed that the state commission's order cannot be obeyed without a joint use of certain existing facilities such as main line tracks; and that the order is for that reason repugnant to the provisions of paragraph 4. This claim is based solely on the fact (set forth in the petition) that four plans for a depot at the site finally designated were proposed by witnesses and all these plans provided for some joint use of main line trackage. As stated in the decision of the commission (see Petition p. 5) and as is obvious from the commission's order the commission did not order the railroad companies to carry out any of these proposed plans. It simply ordered them to construct a depot somewhere within a large area according to plans which they themselves were to prepare. To say that no possible plan for a union depot can be devised which does not require a joint use of tracks is merely to speculate in advance of any attempt to prepare final plans. We may concede that the carriers would find it less expensive to comply with the order if they would arrange for some joint use of trackage. The witnesses who presented the plans referred to were

not considering the effect paragraph 4, Section 3 of the Interstate Commerce Act might have on the jurisdiction of the state commission if a joint use of tracks was had; they were merely considering the simplest way from an engineering standpoint of rearranging the tracks so as to bring the various lines to the proposed depot site and eliminate the grade crossings on Alameda Street. These plans were prepared and submitted at hearings held prior to the enactments of 1920. At that time the question of constructing a depot without joint use of tracks was not being considered. Subsequent to 1920 the commission inspected the premises and maps and made its order. An inspection of the map attached to the petition herein will show clearly that there is no obstacle to the construction of a union depot within the area designated without the joint use of existing tracks or other facilities. In view of the facts that no joint use of facilities was ordered by the commission; that no final plans have been prepared and that no attempt has been made to comply with the order, we submit that the objection that the order is repugnant to paragraph 4 of Section 3 because it will necessitate a joint use of tracks is wholly inconsistent and unfounded.

Section 1. (Paragraph 20). The last reference made by the state Court to the interstate act is to paragraph 20, Section 1. This paragraph prohibits the railroads from making any constructions or abandonments of lines of railroad without the

consent of the interstate commission. The prohibitions of the paragraph refer expressly to paragraphs 18 and 19 of Section 1. They do not refer to existing terminal facilities which are covered by Section 3, paragraph 4. The state Court erroneously construed paragraph 20 to apply to "the extension of railroad facilities and the abandonment of other railroad facilities, *including terminals.*" Upon this erroneous construction the Court based its conclusion that Congress has fully occupied the field of regulation "of the extension of terminal facilities."

The Court also erroneously construed the commission's order as requiring extensions and abandonment of lines of railroad. As already shown the order required no construction or extension of new lines or abandonment of old lines within the meaning of the act as construed by the interstate commission. Nor did the order require any joint use of facilities. The prohibitions of Section 20 therefore do not terminate the power of the state commission to make the order which it did make.

We have discussed all the sections of the interstate act relied upon by the Court and submit that not one of them vests in the interstate commission the power to order carriers to erect a new union depot or deprives the state of the power to do so. The fact that many kinds of regulations are specifically provided for in the act, as for instance interchange of traffic, switch connections, car service, securities, extensions into new territory, consolidation

of lines, etc., while the act is silent as to any regulation concerning new union depots indicates that the latter are not covered by the act. The familiar principle that the mention of specific matters excludes others is applicable here and excludes any possibility of the jurisdiction over new union depots being conferred on the interstate commission by the general provisions referred to in the above resume as being indicative of the scope of the act.

If, after plans are prepared for a union depot in compliance with the state commission's order, it should be deemed advisable to invoke the jurisdiction of the Interstate Commerce Commission in connection with any part of the work such as a joint use of tracks or for the issuance of securities, there is no reason why application therefor cannot be made to the interstate commission at that time. The present validity of the state commission's order is not affected by this possibility. Under well settled state law an order of the Railroad Commission is not invalid merely because the order cannot be carried out until some other public authority takes additional or concurrent action.

Motor Transit Company v. Railroad Commission, 64 Cal. Dec. 278, 209 Pac. 586;

Oro Electric Company v. Railroad Commission, 169 Cal. 466, 147 Pac. 118;

Turner Creamery Co. v. Chicago, Milwaukee & St. Paul R. R., 154 N. W. 819, P. U. R. 1916 A 1083.

It is our belief that the provisions of the Act above referred to are so clear that there can be no doubt as to their meaning. We are mindful of the rule that when the language of an act is clear to the Court, the legislative history of the act cannot control the interpretation. If, however, there should exist any doubt in the mind of the Court as to whether the sections above outlined deprive the state of its jurisdiction relative to union depots, we ask the Court's attention to the Congressional Record of November 15, 1919.

While the Esch-Cummins bill was being debated on the floor of the House of Representatives, Congressman McClintic of Oklahoma offered the following amendment (Congressional Record, November 15, 1919, p. 9067):

> "Provided, further, that the Commission is hereby given authority to require a carrier to maintain its present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission."

The purpose of this amendment, as explained by Congressman McClintic (pp. 9067, 9068), was to give the Interstate Commerce Commission jurisdiction over union passenger depots, largely for the purpose of preventing the railroad companies from tearing apart the unification of passenger depots so extensively established by the Government during

the federal operation of the railroads. Chairman Esch opposed the adoption of the amendment on the ground that jurisdiction over such matters had always been vested in the various states and should continue to be exercised by them. Chairman Esch said (Congressional Record, November 15, 1919, p. 9068):

> "Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several states. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matter of depots and joint use of depots is practically in the jurisdiction of the state commissions and all but one of the states have such commissions. In such small matters the detail should be left within the jurisdiction of the state authorities, who know the situation, know the conditions and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals."

Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected (Congressional Record, November 15, 1919, p. 9071), thereby clearly indicating an intention that jurisdiction over union passenger depots should not be taken away from the states.

The above quotations refer only to the rejection of the amendment on the floor of Congress and to the

statement of the chairman of the committee having the bill in charge. It has been held that the courts may look to both these sources when in doubt as to the meaning of a statute.

United States v. Delaware & Hudson Co., 213 U. S. 366;

U. S. Printing Co. v. Deering, U. S. Adv. Op. 1920-21, pp. 176, 182.

2. If the Amendments of 1920 should be construed to cover the subject of union depots nevertheless the state's power remains unimpaired and the State Commission's Order is valid unless the Interstate Commission makes an inconsistent order.

In all its discussion of the amended Interstate Commerce Act the state Court made no mention of the proviso at the close of paragraph 17, Section 1. This proviso reads as follows:

> "Provided, however, that nothing in this act, shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission made under the provisions of this act."

This proviso in plain terms preserves the police power of the state to require just and reasonable freight and passenger service for *intrastate* business. The fact that a carrier may also be engaged largely in interstate business does not deprive the state of this reserved power *unless* the state makes a requirement that is

"inconsistent with any lawful order of the commission (interstate) made under the provisions of this act."

The order made by the California commission was to require just and reasonable service of three railroads engaged largely in intrastate business. This order was certainly not inconsistent with any lawful order of the Interstate Commerce Commission for the obvious reason that the interstate body has made no order at all. Until it makes an order and unless the requirement of the state commission conflicts with that order, the state will retain full power to require just and reasonable passenger service of any railroad doing intrastate business regardless of the fact that such road also does interstate business.

The proviso in paragraph 17 is in effect a congressional enactment of the principle announced in *Missouri Pacific Ry. Co. v. Larrabee Flour Mill Co.*, 211 U. S. 612, viz., that even when Congress has entered a particular field of interstate commerce and has authorized the Interstate Commerce Commission to exercise jurisdiction therein, nevertheless unless the matter is one to be handled by general rule or regulation, the states may continue to act as to particular situations unless and until the interstate commission takes action as to such particular situations.

In the Larrabee case the state Court, by a writ of mandamus, ordered the Missouri Pacific Railroad Company to transfer and return cars loaded and unloaded from the line of the Santa Fe Railroad to

the mill and elevator of the Larrabee Flour Mills Company. The Missouri Pacific line was engaged in interstate commerce and about three-fifths of the flour of the mill company was shipped out of the state.

The contention was made that the Missouri Pacific and Santa Fe companies were common carriers engaged in interstate commerce, and, as such, were subject to the control of Congress, and therefore not amenable to the power of the state. At that time (1908), the Interstate Commerce Act was in force and the Interstate Commerce Commission had power to act in respect to the particular matters involved.

On principle, therefore, the situation was identical with that here under discussion. A requirement relative to service had been made by the state. The railroad involved was engaged largely in interstate commerce. In fact, the requirement made by the state acted directly upon interstate commerce. Congress had acted by creating the Interstate Commerce Commission and *vesting it with full power to regulate the very matter which was at issue.*

This Court said:

> "On the other hand, it is said that Congress has already acted,—has created the Interstate Commerce Commission, and given to it a large measure of control over interstate commerce. But the fact that Congress has intrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. Congress could always regulate interstate commerce, and could make specific provisions in reference

thereto, and yet this has not been held to interfere with the power of the state in these incidental matters. A mere delegation by Congress to the commission of a like power has no greater effect, and does not of itself disturb the authority of the state. It is not contended that the commission has taken any action in respect to the particular matters involved. It may never do so, and no one can, in advance, anticipate what it will do when it acts."

In the present instance the state Court, in its decision, said that this case of *Missouri v. Larrabee* is inapplicable because it was decided in 1909, several years prior to the attempt on the part of Congress to invest the Interstate Commerce Commission with jurisdiction over extensions or changes in interstate railroad lines.

The power of Congress to regulate interstate commerce, although supreme and exclusive, remains dormant until actually exercised. (Chief Justice Marshall in *Willson v. Black Bird Creek Marsh*, 2 Pet. 251; 7 L. ed. 414.) But the mere enactment of laws by Congress does not arouse this dormant power unless those laws are of such nature as to exclude any action by the states.

Cooley v. Port Wardens, 12 How. 316;

Sturges v. Crowinshield, 4 Wheat. 193;

Cleveland etc. v. Illinois, 177 U. S. 514; 44 L. ed. 868;

No. Pac. R. R. Co. v. Washington, 222 U. S. 370; 56 L. ed. 237;

Atl. Coast Line Ry. v. State of Georgia, 234 U. S. 280; 50 L. ed. 1312.

A law of Congress forbidding train crews to remain on duty more than 16 consecutive hours was a complete exercise of the dormant power to regulate that phase of the interstate commerce. Nothing remained to be done to make the law effective. It applied instantly to every train crew on every train engaged in interstate commerce regardless of the fact that such a crew might at the same time be engaged in intrastate commerce. No hearing by a commission or findings and orders were necessary. Nothing the state could do would add to or take away from the scope of the requirement. The hitherto dormant power of Congress was fully exercised, and this field of regulation fully occupied. (*No. Pac. R. R. Co. v. Washington*, 222 U. S. 370.)

Not so with depots. Before a depot can be required there must be an investigation of particular conditions and hearing, findings and a specific order must be made. Congress might conceivably do this itself. But if it delegates this power to a subordinate commission, still the power remains dormant until that subordinate commission exercises it.

In the *Larrabee* case Congress had delegated to the Interstate Commerce Commission powers of control over the particular matter in question. But that commission had not acted, and, as the Court said, it might never act, therefore, the federal power still remained dormant, and the state was free to make those regulations conducive to the welfare of its citizens. We submit that what the Court said in the *Larrabee* case applies as well to the delegations

of power made by Congress in the Act of 1920 as to those made by earlier enactments.

The case chiefly relied upon by the state Court is *People ex rel New York Central Railroad Company v. Public Service Commission,* 233 N. Y. 113. It was cited as a case approaching identity with the case at bar. In that case the state commission ordered two railroads to make track connections to permit interchange of freight.

We submit that the case is not in point because Section 3 of paragraph 3 of the Interstate Act as amended specifically provides for the interchange of traffic and the New York Court held that the New York law did not authorize the state commission to make such a requirement. Here the situation is exactly opposite. The interstate act does not provide for new union depots and the California law specifically does so.

For the reasons above set forth petitioner respectfully asks that the petition for a writ of *certiorari* be granted.

Dated, San Francisco,
March 21, 1923.

Respectfully submitted,
HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

NOTICE OF DATE FOR SUBMISSION.

To Los Angeles and Salt Lake Railroad Company, Respondent herein and to A. S. Halsted and Fred E. Pettit, Jr., Esqs., Los Angeles, California, its Attorneys:

Please take notice that the foregoing petition for writ of certiorari will be presented to the Supreme Court of the United States on Monday, the 16th day of April, 1923.

Dated, San Francisco,
March 21, 1923.

HUGH GORDON,
WILLIAM W. CLARY,
Attorneys for Petitioner.

ADMISSION OF SERVICE.

Due service and receipt of a copy of the within petition for writ of certiorari to the Supreme Court of the State of California, brief in support thereof and notice of date for submission thereof is hereby admitted this 23rd day of March, 1923.

A. S. HALSTEAD,
FRED E. PETTIT, JR.,
Attorneys for Respondent.

Copy

APR 18 1923

WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No. 986 285

Railroad Commission of the State of California,

Petitioner,

vs.

Los Angeles & Salt Lake Railroad Company (a Corporation),

Respondent.

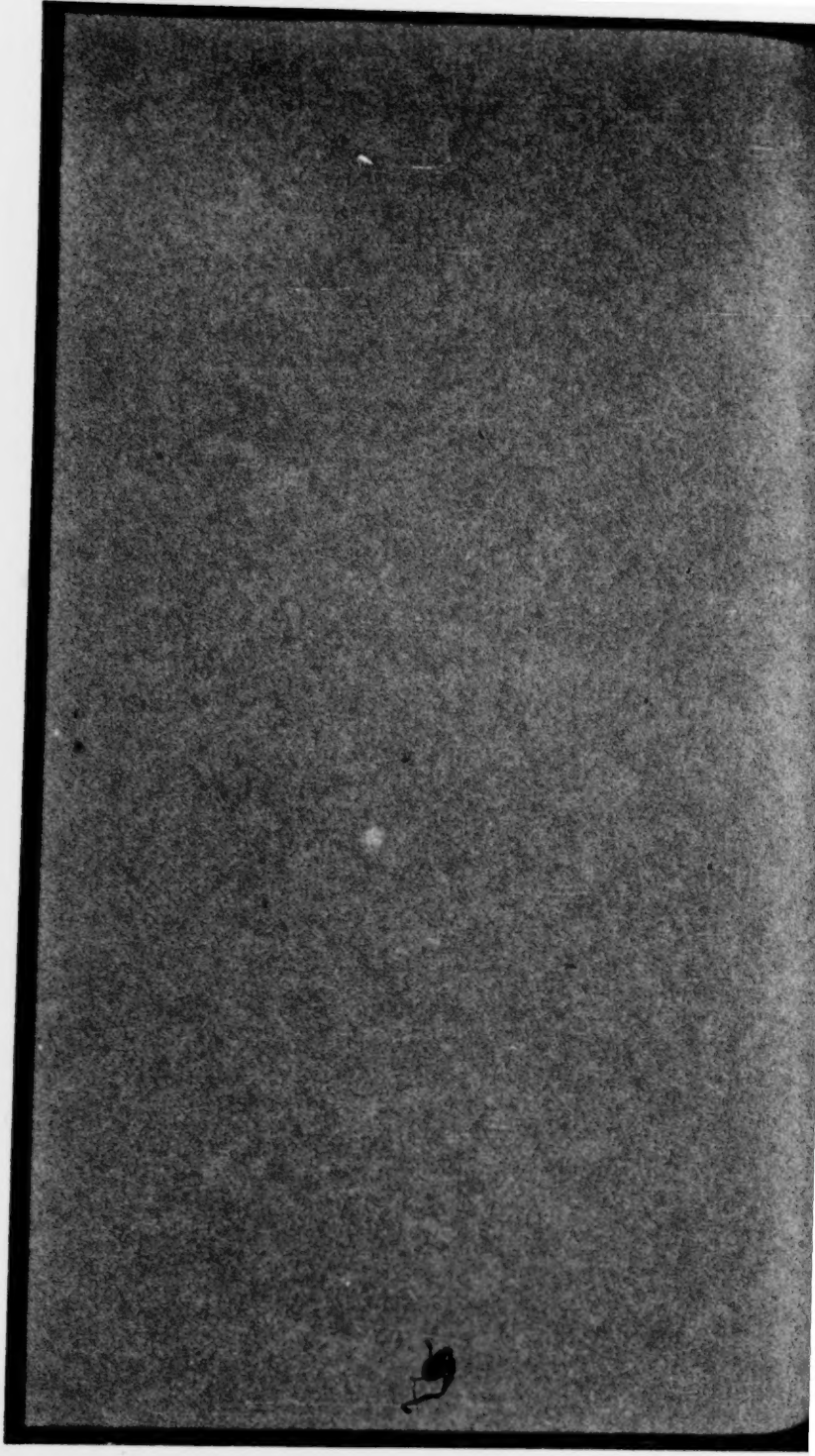
RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

C. W. DURBROW,
E. W. CAMP,
A. S. HALSTED,
CHAS. H. BATES,
Attorneys for Respondent.

W. F. HERRIN,
Of Counsel.

Parker, Stone & Baird Co., Law Printers, 241 New High St., Los Angeles.



SUBJECT INDEX.

PAGE

Abandonment of Existing Facilities..... 4

Extensions and Joint Trackage Arrangements Necessary Under the Railroad Commission's Order..... 5

Corrections in Petitioner's Statement of Facts..... 8

The Transportation Act of 1920 Vests in the Interstate Commerce Commission Sole Power and Authority to Order or Permit Joint Use of Railroad Facilities. That Field Is Thereby Completely Occupied, to the Exclusion of Any Right of State Commissions to Act in the Premises..... 9

The Language Used in the Transportation Act of 1920 Is Clear. No Reference May Be Had to Views of Individual Members of Congress Nor to Committee Reports Where the Effect Would Be Only to Create Doubts, Which Do Not Now Exist 15

Conclusion 16

TABLE OF CASES.

Aldridge v. Williams, 3 How. 9..... 15

Akron, Canton & Youngstown Railway Company *et al.*, v. The United States *et al.*..... 9

District v. Washington, 108 U. S. 243..... 15

Dunlap v. U. S., 173 U. S. 65..... 15

Louisville and Nashville v. The State, 16 Ala. App. 199, 76 So. Rep. 505..... 12

Maxwell v. Dow, 176 U. S. 581..... 15

Missouri etc. v. Larrabee etc., 211 U. S. 612, 53 L. Ed. 352..... 10

PAGES

New York Central Railroad Company v. Public Service Commission of the State of New York, 198 Appellate Division 436, 191 New York Supplement 636 12

People v. Public Service Com. (Court of Appeal, New York), 233 N. Y. 113, 135 N. E. 195..... 11

Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Company, 257 U. S. 563.... 9

Railroad Commission v. C. B. & Q. Railroad Company, 257 U. S. 563..... 16

State v. Atlantic C. L. R. R. Co., ... Fla. ....., 87 So. Rep. 773 13

U. S. v. U. P. R. Co., 91 U. S. 72..... 15

NOTE.

The petitioner, Railroad Commission of the state of California, has filed three petitions for writs of certiorari to the Supreme Court of the state of California, entitled as follows:

(1) Railroad Commission of the state of California, petitioner, vs. Southern Pacific Company (a corporation), and Southern Pacific Railroad Company (a corporation), respondent.

(2) Railroad Commission of the state of California, petitioner, vs. Atchison, Topeka & Santa Fe Railway Company (a corporation), respondent.

(3) Railroad Commission of the state of California, petitioner, vs. Los Angeles & Salt Lake Railroad Company (a corporation), respondent.

These petitions and the briefs accompanying them are identical in subject matter and differ only in the titles of the proceedings. In all three of these cases the transcript of record is the same. An original of this brief is therefore filed in each of the three cases, together with the usual number of copies. These bear the titles, however, of the proceedings in which filed.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1922.

No.....

Railroad Commission of the State of California,

Petitioner,

vs.

Los Angeles & Salt Lake Railroad Company (a Corporation),

Respondent.

RESPONDENT'S BRIEF

In Answer to Petition for Writ of Certiorari to the Supreme Court of the State of California and Brief in Support Thereof.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

While a respondent is not required by the statutes or rules of court to file a brief in answer to a petition for a writ of certiorari, the

instructions relative to applications for writs of certiorari, under the Acts of March 3rd, 1891, and September 6th, 1916, contemplate his doing if he so desires. In this case the respondent deems it desirable to do so, primarily for the purpose of pointing out just what facilities of the railroads will have to be abandoned if the order of the Railroad Commission of the state of California is carried out, and secondly, what extensions and joint trackage arrangements will have to be provided in order to comply with the terms of that order. Jurisdiction over these matters is expressly vested in the Interstate Commerce Commission under the Transportation Act, 1920, and for that reason alone the decision of the Supreme Court of the state of California is clearly right. These facts and conclusions may be amplified.

Abandonment of Existing Facilities.

Let us refer to the map attached to the petitoin. All trains of the Southern Pacific, upon its line to San Pedro and the Harbor District, and all of its trains to and from Santa Ana and its several branches in Orange county, now move along Alameda street. All passenger trains to and from San Francisco and other points to the north, and all passenger trains upon its main line to El Paso, move along Alameda street northerly of Fourth street. These "operations"

along Alameda street, a distance of approximately three miles, according to the terms of the order must be discontinued and abandoned, only local switching being permitted.

The passenger station of the Southern Pacific is located at the intersection of Fifth street and Central avenue. This is a modern structure, completed in 1915. While the order does not expressly provide for its abandonment its effect is precisely that, for if passenger trains cannot be run into and out of such a station it thereupon ceases to be a passenger station.

The Santa Fe and Salt Lake passenger stations are located respectively westerly and easterly of the Los Angeles River, near its intersection with First street. While it is conceivably possible that these two stations might still be used as such after completion of a union depot in the Plaza district, as contemplated by the Railroad Commission, the fact nevertheless remains that in practical effect the enforcement of the order will render these properties useless and will result in their abandonment.

Extensions and Joint Trackage Arrangements Necessary Under the Railroad Commission's Order.

Since all train movements except local switching are ordered discontinued along Alameda street, the Southern Pacific would have to seek a new route through the city, north to south,

What routes are open to it?

It might make use of the tracks of the Santa Fe along the westerly bank of the river—the Santa Fe's principal terminal facilities in the city—by the construction of connecting tracks between the two lines in the southerly portion of the city, and the construction of other connecting tracks in the north central portion of the city.

Or it might make use of the tracks of the Salt Lake along the easterly bank of the river —the latter's principal terminal facilities in the city—by the construction of similar connecting tracks. This would, however, occasion crossing and again recrossing the river.

Or it might build a new line of its own through the city, but this is entirely impracticable due to the enormous expense of constructing a line of such length through the heart of the industrial section of a large city.

The Salt Lake would have to build an extension or new line across the river to reach the area defined by the commission as the site for a union station.

The Southern Pacific main line to and from the east borders this site on the north as does the Santa Fe on the east, and it is conceivably possible to bring trains upon those lines into a depot located within the area mentioned, without serious operating difficulties. However, it

would be extremely difficult to handle Southern Pacific trains from and to the north, into and out of such a station without some switching back and forth, which is of course contrary to good operating methods. This objection might be obviated by the construction of other extensions of line, but this only emphasizes the fact that the order of the Railroad Commission does contemplate, actually and in practical effect, extensions of very considerable magnitude, together with joint use of certain main line tracks and terminal facilities now separately owned and operated.

The petitioner seeks to avoid the issue raised by this situation, by saying that the abandonment of facilities and the construction of extensions and the joint use of facilities are not contemplated by the express terms of the order as made, but the fact remains that such is the necessary effect of the order. The Railroad Commission has no power to do indirectly what it cannot do directly.

We shall not discuss in this brief constitutional questions respecting an order of any commission directing a public utility to expend large sums in acquiring new property and devoting it to a public use.

Corrections in Petitioner's Statement of Facts.

On pages 15 and 16 of petitioner's brief it is stated:

"The three railroads involved approach the city from the north and come together at a point marked 'North Broadway Viaduct' near the top of the map. All three roads pass under this viaduct."

While literally true, the statement gives a somewhat false conception of the true situation. The Southern Pacific trains to the north pass this point, as do those of the Santa Fe via Pasadena. The Salt Lake has but a branch to Pasadena and that is the line referred to. All of the Santa Fe trains on its main line to the east through Fullerton, and to San Diego, move through the southerly portion of the city, as do those of the Southern Pacific on its Santa Ana and San Pedro branches. All of the main line trains of the Salt Lake and its San Pedro branch line trains enter and leave through the southerly portion of the city. The main line of the Southern Pacific to the east does not pass near the North Broadway viaduct.

On page 17 of petitioner's brief it is stated that the Salt Lake line borders the area prescribed by the Railroad Commission. This is not the fact, for it will require the construction of an extension of the Salt Lake line crossing the river, to reach the area mentioned.

The Transportation Act of 1920 Vests in the Interstate Commerce Commission Sole Power and Authority to Order or Permit Joint Use of Railroad Facilities. That Field Is Thereby Completely Occupied, to the Exclusion of any Right of State Commissions to Act in the Premises.

In the decision of the Supreme Court of California, of which petitioner seeks a review, is a clear exposition of the new policy of the federal law with reference to the railroads. And in the recent cases of Akron, Canton & Youngstown Railway Company *et al.*, v. The United States *et al.*, (The New England Divisions' case), decided by this court on February 19th, last, and in Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Company, 257 U. S. 563, this court has in no uncertain language recognized and given effect to the greatly broadened powers of the Interstate Commerce Commission, under the Transportation Act, 1920.

The Supreme Court of the state of California has recognized in the instant case that the order of the Railroad Commission, requiring as it did the construction and extension of lines of railroad, the abandonment of operations upon a very important section of main line of one of the railroads, and the joint use of terminal fa-

cilities and the construction of certain extensions, infringed upon these newly granted powers of the Interstate Commerce Commission.

As to joint use of terminal facilities: Petitioner's brief says, page 26, that the order does not require any joint use of facilities; but this seems to be intended to apply to present or existing facilities and to admit that there is to be and must be a joint use of the new station and the facilities appurtenant thereto.

It is clear that under the provisions of paragraphs 3 and 4 of section 3 of the Interstate Commerce Act the power to order such joint use of a terminal is now vested in the Interstate Commerce Commission. In answer to this, the petitioner cites the case of Missouri etc. v. Larrabee etc., 211 U. S. 612, 53 L. Ed. 352, in support of the proposition that although the act may have vested such power in the Interstate Commerce Commission, yet until that commission asserts and exercises the power the state's authority abides the same as if Congress had not acted at all. In other words, petitioner contends that Congress having been delegated the power to regulate interstate commerce, may itself delegate to the commission the right to say whether or not that power shall be exercised, and this is plainly contrary to the common maxim *delegatus non potest delegare*.

But we shall certainly not attempt here to question any ruling made by this court. Our view of the Larrabee case and of its inapplicability here is best illustrated by four cases recently decided in the state courts.

The first of these, to which we invite the court's most careful attention, is the very recent decision of People v. Public Service Com. (Court of Appeal, New York), 233 N. Y. 113, 135 N. E. 195. It is stated in that opinion that in September, 1920, the Public Service Commission made an order requiring the N. Y. Central and the Lehigh to make such track connections between their lines in and near Batavia, N. Y., and lay such other tracks and facilities as "may be necessary to establish and furnish adequate and convenient interchange of freight; that the connection be made by repairing and completing the track now connected with the tracks of the Lehigh and extending to a point near the track of the N. Y. C., which track was formerly connected with the tracks of the N. Y. C."

In the second division of the opinion the court quotes the second paragraph of section 3 of the Interstate Commerce Act as amended by the Transportation Act of 1920, section 405, and says:

> "To sustain the order of the Public Service Commission in the instant case would necessarily establish that the two several

> commissions mentioned were clothed with jurisdiction to grant the relief sought and require us to ignore the well-established principle of law that the Congress, having delegated to the Interstate Commerce Commission power to deal with the subject matter of this proceeding, an exercise of like power by the state is thereby superseded." (Citing cases.)

Another case to which we may refer is, The People of the State of New York, *ex rel.*, the New York Central Railroad Company, v. Public Service Commission of the State of New York, 198 Appellate Division 436, 191 New York Supplement 636, which was affirmed in a memorandum opinion of the New York Court of Appeals, reported in 134 Northeastern 590, that court simply saying that the subject matter of the controversy had, by the Transportation Act of 1920, been relegated to the Interstate Commerce Commission. Thereafter, application was made to this court for a writ of certiorari, and that was denied without an opinion (257 U. S.——, 42 Sup. Ct. 314, 66 Law Edition——).

In Louisville and Nashville v. The State, 16 Ala. App. 199, 76 So. Rep. 505, the Supreme Court of that state reviewed the opinion by the Court of Appeals. That case involved what is known as the Railroad Headlight Law of Ala-

bama, which required a headlight of a certain candlepower to be used on every locomotive.

The Supreme Court of Alabama, page 514 of the Reporter, said:

> "When the mandatory act of Congress approved March 4, 1915, is read in connection with the Safe Locomotive Boilers Act of February 17, 1911, we cannot escape the conclusion that the intention of Congress is plain that the states must be excluded from the right to legislate within the field to which the several original acts and the mandatory act extended the federal authority. It is immaterial that the final rules on the subject of headlights to be used on such locomotives were not promulgated by the Interstate Commerce Commission until, respectively, June 6 and December 26, 1916, after the commission of the alleged offense for which the prosecution was had.
>
> "We are of the opinion that the act of the Alabama Legislature of July 17, 1915, is contrary to the express purpose and scope of the mandatory act of Congress of March 4, 1915, and that as to engines engaged in interstate commerce it has no application."

Another case closely analogous to the case at bar is that of State v. Atlantic C. L. R. R. Co., ... Fla. ..., 87 So. Rep. 773, decided February 15, 1921. This case involved a section of the Transportation Act of 1920, the same act which we are here invoking, but a section of the act which is not here involved, namely, the section

amending section 6, subdivision 13-A of the Interstate Commerce Act.

The court says:

> "Until Congress acted, there could be no question of the power of the state over the matter in controversy. But when Congress exercised the power and lodged jurisdiction over it in the Interstate Commerce Commission, it took it out of the jurisdiction of the state, and the right of the state over the same subject matter was extinguished."

The court further says at page 778:

> "In the case of Missouri P. R. Co. v. Larrabee etc., the court recognized and sanctioned this doctrine, but found that there had been no action by Congress or the Interstate Commerce Commission and that therefore a state court may by mandamus compel a railroad company doing interstate business to afford equal local shipping service to its shippers, notwithstanding the cars in regard to which the service is claimed are eventually to be engaged in interstate commerce. From this it seems that if Congress had expressly lodged in the Interstate Commerce Commission the power and duty with regard to switching service, as it has with regard to requiring physical connection between rail and water transportation, the court would have held that the state was without authority to regulate the subject."

It cannot be that a state commission may order joint use of terminals—terminals used in

interstate commerce—and thus forestall and prevent the exercise of this power vested in the Interstate Commerce Commission.

The Language Used in the Transportation Act of 1920 Is Clear. No Reference May Be Had to Views of Individual Members of Congress nor to Committee Reports Where the Effect Would Be Only to Create Doubts, Which Do Not Now Exist.

In attempting to construe the Transportation Act as not conferring upon the Interstate Commerce Commission jurisdiction with respect to joint terminals, the petitioners brief at page 30 descends to a quotation from the Congressional Record, giving excerpts from the debate on the bill in the House of Representatives. Upon this point this court has expressed itself repeatedly to the effect that in construing an Act of Congress a court is not at liberty to recur to the views of individual members in debate.

Aldridge v. Williams, 3 How. 9;
U. S. v. U. P. R. Co., 91 U. S. 72;
District v. Washington, 108 U. S. 243;
Dunlap v. U. S., 173 U. S. 65;
Maxwell v. Dow, 176 U. S. 581,

and numerous other cases.

In Railroad Commission v. C. B. & Q. Railroad Company, 257 U. S. 563, this court in construing this very Transportation Act of 1920, said at page 243:

> "Great stress is put on the legislative history of the Transportation Act to show that the bill was not intended to confer on the commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute which in its language is doubtful or obscure. (Citing cases.) But when taking the act as a whole the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. (Citing cases.) Such aids are only admissible to solve doubt and not to create it."

Conclusion.

It is therefore submitted that the petition should be denied. That this conclusion is correct is recognized by the city of Los Angeles, one of the parties to this proceeding before the Railroad Commission and in the Supreme Court of the state of California, since it has already filed its petition with the Interstate Commerce Commission seeking an order such as it origin-

ally desired from the Railroad Commission of the state of California.

Respectfully submitted,

C. W. DURBROW,
E. W. CAMP,
A. S. HALSTED,
CHAS. H. BATES,
Attorneys for Respondent.

W. F. HERRIN,
Of Counsel.